TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 262.

MARY LENORE BULLEN, GEORGE BULLEN, JR., RICHARD NIXON BULLEN, WILLIAM GRAHAM BULLEN, AND JOHN NIXON BULLEN, PLAINTIFFS IN ERROR,

vs.

THE STATE OF WISCONSIN.

IN ERROR TO THE COUNTY COURT OF WAUKESHA COUNTY, STATE OF WISCONSIN.

FILED OCTOBER 19, 1914.

(24,402)

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* * * * * * *

1-16 To the Honorable Edward D. White, Chief Justice of the United States, and to the Associate Justices of the Supreme Court of the United States, and to the Honorable the Supreme Court of the United States, and to the Honorable John B. Winslow, Chief Justice of the Supreme Court of the State of Wisconsin:

The petition of Mary Lenore Bullen, George Bullen, Jr., and Richard Nixon Bullen, also of William Graham Bullen and John Nixon Bullen, minors, who appear by their next friend, Mary Lenore Bullen, respectfully shows as follows:

I. Your petitioners are residents, the said Mary Lenore Bullen, William Graham Bullen and John Nixon Bullen of Oconomowoc, and the said Richard Nixon Bullen, of Milwaukee, in the state of Wisconsin, and the said George Bullen, Jr., of Spavinaw, in the state of Oklahoma.

II. On the 13th day of July, 1909, T. W. Haight, as public administrator, filed his petition in the County Court of Waukesha County, Wisconsin, for special administration, for the purpose of collecting an inheritance tax upon the estate of George Bullen. In said petition it was recited that George Bullen died an inhabitant of Waukesha County, Wisconsin, on September 10, 1908, leaving real and personal estate in said county. That before his death he had transferred a portion of his estate to the Northern Trust
17 Company, of Chicago, Illinois, in contemplation of death, and without adjustment and payment of the inheritance tax of the state of Wisconsin. The said petitioner prayed for administration to himself as public administrator for the purpose of the adjustment and payment of the inheritance tax provided by law.

III. Afterward, on the same day, C. W. Newbury was appointed guardian ad litem for the infant defendants above named and for your petitioner Richard Nixon Bullen, then a minor, but who has since become of lawful age.

IV. Thereafter, on the same day, your petitioners, Mary Lenore Bullen and George Bullen, Jr., filed in said County Court, their answer to the petition of said public administrator. In said answer they admitted that George Bullen died in Waukesha County, Wisconsin, on the 10th day of September, 1908; that he was at that time an inhabitant of said county of Waukesha; that he left an estate in the said state of Wisconsin; that at the time of his death, he had on deposit to his own credit and in his own name, the sum of $12,007.02, with the Northern Trust Company of Chicago, Illinois, and the further sum of $2.75 with the Corn Exchange National Bank, also of Chicago, Illinois; that said sums appeared to be taxable under the inheritance tax laws of the state of Wisconsin, and that accordingly the said respondents, Mary Lenore Bullen and

George Bullen, Jr., consented to the granting of such
18 special administration to the public administrator as might be necessary for the purpose of adjustment and payment of the inheritance tax found to be due in said estate.

V. The said respondents by their answer further admitted that a portion of decedent's estate was, prior to his death, transferred to the Northern Trust Company without the adjustment of payment of any inheritance tax thereon, but expressly denied that the property so transferred to the Northern Trust Company was subject to any tax whatsoever under the inheritance tax laws of the state of Wisconsin. In their said answer they further averred that if the state of Wisconsin should levy and collect any inheritance tax upon the property transferred to the Northern Trust Company by George Bullen deceased, other than the real estate and chattels located in Wisconsin, the said state would thereby take the private property of the said respondents for public use, without just compensation, and would deprive them of their property without due process of law and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and the Northern Trust Company, in violation of the Constitution of the United States, and of the 5th and 14th Amendments thereof.

VI. Thereafter a hearing was had before the said County Court, on evidence, and a stipulation as to the facts, and these peti-
19 tioners, by their counsel, supported their objections to said tax by the arguments, among others, that the beneficial interest in the property transferred to the Northern Trust Company by George Bullen in his lifetime, passed at his death to these petitioners under and by virtue of the laws of Illinois, and not under or by virtue of the laws of Wisconsin, and that therefore the said property was subject to an inheritance tax only under the laws of Illinois and not under the laws of Wisconsin; and also that the state of Wisconsin had no jurisdiction to tax said property or the devolution thereof, and that said property was held under a contract made in Illinois to be performed in Illinois, with reference to property in Illinois, and was made before the enactment of the law providing for an inheritance tax in Wisconsin, and that therefore the imposition of such tax on said property or upon the devolution thereof, would be a violation of the Constitution of the United States and the aforesaid amendments thereof.

VII. On the 30th day of December, 1909, the said County Court of Waukeska County made its findings and thereby found that an inheritance tax in favor of the state of Wisconsin should be assessed not only against the said deposits of money to the credit of the said George Bullen with the Northern Trust Company
20 and the Corn Exchange National Bank of Chicago, Illinois, and the real and personal estate of George Bullen in the state of Wisconsin which were found to be of the clear value of $88,109.75, but also against personalty in the hands of the Northern Trust Company at the time of his death apportionable among your petitioners, of the clear value of $894,125.44, said amount being the net valuation of the entire amount of securities transferred to and

held by the Northern Trust Company under assignments in trust by George Bullen, after deducting from the full valuation thereof, exemptions in the amount of $25,736.05; and thereupon, and on the same day, the said County Court entered its judgment fixing the aggregate valuation of the taxable property apportionable among your petitioners, at $982,235.49, and assessing thereon an inheritance tax of $19,730.85.

VIII. On the 28th day of January, 1910, these petitioners filed with said County Court, their exceptions to the findings of the said court, and thereby objected to the said findings, upon the ground that insofar as said tax was assessed upon the property transferred to the Northern Trust Company by the said George Bullen in his lifetime, the judgments assessing said tax would operate to take the private property of these petitioners for public use, without just compensation, and would deprive these petitioners of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the
21 contract between George Bullen and the Northern Trust Company in violation of the Constitution of the United States and of the 5th and 14th Amendments thereof.

IX. Afterward, on the same day, these petitioners filed their notice of appeal to the Circuit Court of Waukesha County, Wisconsin, and on the 21st day of February, 1910, filed in said Circuit Court their objections to the Assessment and collection of any transfer tax upon any property transferred to the Northern Trust Company by said George Bullen in his lifetime, for the reason that if the said state of Wisconsin or its officials, should levy and collect any inheritance tax upon said property so transferred, the said state of Wisconsin would thereby take the private property of these petitioners for public use without just compensation, and would deprive these petitioners of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and the Northern Trust Company in violation of the Constitution of the United States and in violation of the 5th and 14th Amendments thereof, and the minor defendants in the above mentioned proceeding also joined in said objections by their guardian ad litem.

X. Thereafter a hearing was had before the said Circuit
22 Court on the record of said cause, as tried before the County Court, and upon the objections of these petitioners and on behalf of these petitioners, the same arguments, among others, were presented which were presented at the hearing before the said County Court as hereinabove set forth in Paragraph VI of this petition.

XI. On the 9th day of March, 1910, the said Circuit Court of Waukesha County made its findings of law and fact in the above proceedings, and found, among other things, that the inheritance tax should be computed on the personal property of the decedent wherever located, but only upon the real estate in Wisconsin and upon the securities transferred to the Northern Trust Company on

the portions that each heir or beneficiary received under the trust agreement.

XII. Prior to the findings and judgment of the said Circuit Court, your petitioners presented to the said court certain proposed findings of fact and conclusions of law, among other things, requesting the said court to find certain conclusions of law that only the real estate situated in the County of Waukesha, Wisconsin, and the chattel property in said county to the value of $20,000, and said monies in Chicago subject to check, amounting to the sum of $12,101.77, were subject to a transfer tax under the laws of the state of Wisconsin, and that there was no other property belonging to said
23 estate subject to said transfer tax in said state of Wisconsin, but on the 9th day of March, A. D. 1910, the said Circuit Court refused to make the said finding, whereupon these petitioners excepted to the refusal of the court to find that should any inheritance tax be levied and collected upon any of said property transferred to the Northern Trust Company, the state of Wisconsin would thereby take the private property of said appellants for public use without just compensation, and would thereby deprive said appellants of their property without due process of law, and would thereby deny to them the equal protection of the laws and would also impair the obligation of the contract between said George Bullen and the Northern Trust Company in violation of the Constitution of the United States and of the 5th and 14th Amendments thereof.

XIII. Thereafter, on said 9th day of March, 1910, the said Circuit Court of Waukesha County entered its judgment in the above mentioned proceeding, whereby, among other things, the said court ordered and adjudged that the state of Wisconsin do have and recover from the heirs and beneficiaries of said estate, as follows:

Of Mary Lenore Bullen, widow of said deceased, the sum of Four thousand seven hundred forty-four dollars and eighty-seven cents ($4,744.87); of each of the four sons of deceased, namely:
24 George Bullen, Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, the sum of Three thousand seven hundred ninety-eight dollars and sixty-three cents ($3,798.63); of Lucy E. Cleghorn, niece of said deceased, the sum of One hundred sixty dollars and ninety-three cents ($160.93); and of Annie Graham, sister of said deceased, the sum of Eighty four dollars and thirty nine cents ($84.39).

XIV. Under the inheritance tax law of the state of Wisconsin, in force on the said 9th day of March, 1910, it was provided that if an inheritance tax should be paid within eighteen months from the death of the decedent, no interest was chargeable thereon, but if such tax was not paid within eighteen months from the date of the decedent's death, interest was chargeable and collected thereon at the rate of 10 per cent. per annum from decedent's death, unless by reason of necessary litigation or other unavoidable cause of delay such tax should not be determined, in which case interest at the rate of 6 per cent. per annum from the date of the decedent's death was charged thereon. The said inheritance tax law further provided

that when any amount of said tax should have been erroneously paid into the State Treasury, the said Treasurer, upon receiving a transcript from the County Court records, showing the facts, should refund the amount of such erroneous or illegal payment, provided that application for such refund should be made within one year after the reversal or modification of the order fixing such tax, and your petitioners accordingly paid the said tax of $19,939.39, under protest, on the 9th day of March, 1910, and are entitled, as they are advised and believe, to recover whatever sum they have paid in excess of the amount which may be finally fixed in the event that the final judgment hereinafter mentioned of the County Court of Waukesha County, shall be reversed or modified by the Supreme Court of the United States.

XV. Thereupon, your petitioners gave notice of appeal from said judgment to the Supreme Court of the State of Wisconsin, and duly filed their undertaking on said appeal, and the said proceeding was duly docketed in the said Supreme Court of the state of Wisconsin at the August Term of said Court held on the 9th day of August, A. D. 1910.

XVI. Your petitioners further show that under the practice of the Supreme Court of the state of Wisconsin, no assignment of error is filed as part of the record of a cause heard on appeal, but that the assignment of errors is filed in the brief of counsel and that these petitioners by their counsel, filed as a part of their printed brief, the following Assignments of Error in said cause:

"*Assignment of Error.*

"The Circuit Court erred in levying a tax on the property held by the Northern Trust Company in Illinois.

I. Because such property passed to the beneficiaries under the Illinois law, and not under the law of Wisconsin.

II. Because the court below was without jurisdiction of the subject-matter located in Illinois, and was also without jurisdiction of certain of the parties whose shares were taxed.

III. Because to impose any inheritance tax on said property, would be to take the private property of the parties taxed for public use, without just compensation, and would deprive them of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and the Northern Trust Company, in violation of the Constitution and Laws of the state of Wisconsin, and in violation of the Constitution of the United States, and the fifth and fourteenth amendments thereof."

XVII. Upon the hearing of said appeal in said Supreme Court of Wisconsin, being the highest court of said state in which said matter could be heard, your petitioners, by their counsel, fully argued the questions involved in said assignment of error and presented, among

others, the arguments above referred to as presented in the said County and Circuit Courts, but on final hearing of said cause, on the 25th of October, 1910, in the said Supreme Court, it was ordered and adjudged that the judgment of the Circuit Court of Waukesha County in said cause, be affirmed, with costs against the appellants.

27 XVIII. It is the practice of the Circuit Courts and of the Supreme Court of the state of Wisconsin, whenever a cause is heard on appeal, to remit the record in said cause to the court in which the matter originated for final judgment and to keep no record of said cause except of the court's opinion and orders with reference thereto. Pursuant to such practice, the clerk of the Supreme Court of Wisconsin, on or about the first day of December, 1910, remitted the record in said cause, together with a certified copy of the original order and judgment of the court therein, to the said Circuit Court of Waukesha County, and by order entered in said Circuit Court on March 4, 1911, it was ordered that the record and all papers in said proceeding, be forthwith remitted to the County Court of Waukesha County, Wisconsin, in which court the matter originated, for further proceedings according to law.

XIX. Thereafter, pursuant to the order of the said Circuit Court, the record and all papers in said cause were filed in said County Court of Waukesha County, and on the 18th day of November, 1912, a final judgment in said cause was duly entered by said County Court, in substance the same as the judgment of said Circuit Court of Waukesha County. Said final judgment discharged the said T. W. Haight as special administrator of the estate of the said George Bullen and said T. W. Haight has since died.

XX. Said final judgment of the County Court, entered in accordance with said decision of the Supreme Court of Wisconsin, constitutes within the meaning of the statutes of the United States, a final judgment in the highest court of the state of Wisconsin, in which a decision in this suit could be had.

And your petitioners further show that the aforesaid decision of the Supreme Court of Wisconsin, and the aforesaid final judgment of the County Court of Waukesha County, entered on the 18th day of November, 1912, in pursuance of the said decision of the Supreme Court of the state of Wisconsin, and each of them, denies to your petitioners the rights, privileges and immunities held by your petitioners under the Constitution of the United States and particularly under the 5th and 14th Amendments thereof.

Wherefore your petitioners pray that a Writ of Error may issue and that they may be allowed to bring up for review before the Supreme Court of the United States, said order and judgment of the County Court of Waukesha, Wisconsin, entered pursuant
29 to the direction of the Supreme Court of the state of Wisconsin.

And they will ever pray, etc.

MARY LENORE BULLEN,
By ARTHUR HEURTLEY,
Her Attorney in Fact.
GEORGE BULLEN, JR.,
By ARTHUR HEURTLEY,
His Attorney in Fact.
RICHARD NIXON BULLEN,
By ARTHUR HEURTLEY,
His Attorney in Fact.
WILLIAM GRAHAM BULLEN AND
JOHN NIXON BULLEN, *Minors.*
By MARY LENORE BULLEN,
Their Next Friend,
By ARTHUR HEURTLEY,
Her Attorney in Fact.

30 STATE OF ILLINOIS,
County of Cook, ss:

Arthur Heurtley, being first duly sworn, deposes and says that he is the duly authorized attorney in fact of the above named petitioners, George Bullen, Jr., and Richard Nixon Bullen, also Mary Lenore Bullen individually and as the next friend of William Graham Bullen and John Nixon Bullen, Minors.

Affiant further says that he has read the above and foregoing petition subscribed by him in the names of the said petitioners, and that the same is true except as to such matters as are alleged to be stated on information and belief, and as to such he believes it to be true.

ARTHUR HEURTLEY.

Subscribed and sworn to before me this 12th day of September, A. D. 1914.

[Seal Arthur J. Baer, Notary Public, Cook County, Ill.]

ARTHUR J. BAER,
Notary Public.

31 [Endorsed:] No. —. In the Supreme Court of the United States. Mary Lenore Bullen et al., Pl'tffs in Error, vs. State of Wisconsin, Def't in Error. Petition for Writ of Error. Sept. 23d/1914. Upon the within petition let the Writ of Error issue as within prayed. Jno. B. Winslow, C. J., Wis. Montgomery, Hart, Smith & Steere, Attorneys at Law, 959 The Rookery, Chicago.

32 MARY LENORE BULLEN, GEORGE BULLEN, JR., and RICHARD NIXON BULLEN; also WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN, Minors, by Mary Lenore Bullen, Their Next Friend, Plaintiffs in Error,

vs.

THE STATE OF WISCONSIN, Defendant in Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

And now come Mary Lenore Bullen, George Bullen, Jr., and Richard Nixon Bullen, also William Graham Bullen and John Nixon Bullen, Minors, by Mary Lenore Bullen, their next friend, Plaintiffs in Error, and pray for a reversal of the judgment of the Supreme Court of Wisconsin in a certain appeal from the Circuit Court of Waukesha County, Wisconsin, entitled, "In re Estate of George Bullen, deceased, Mary Lenore Bullen and George Bullen, Jr., Richard Nixon Bullen and William Graham Bullen and John Nixon Bullen, Minors, by C. W. Newbury, guardian ad litem, Appellants," vs. The State of Wisconsin and T. W. Haight, Public Administrator, Respondents," which judgment was entered in said Supreme Court of Wisconsin on the 25th day of October, A. D. 1910; and they also pray for a reversal of the judgment of the Circuit Court of Waukesha County, Wisconsin, which judgment was entered on the 9th day of March, 1910, in said cause, which was then pending
33 & 34 in said court under the title of "In the Matter of the Estate of George Bullen, deceased"; and they also pray for a reversal of the final judgment in said cause, which final judgment was entered on the 18th day of November, 1912, in said cause then pending in said County Court of Waukesha County under the title of "In the Matter of the Estate of George Bullen, deceased, and of the determination of the Transfer Tax therein."

JNO. R. MONTGOMERY,
Attorney for said Plaintiffs in Error,
959 *The Rookery, Chicago.*

35 In the Supreme Court of the United States.

MARY LENORE BULLEN, GEORGE BULLEN, JR., and RICHARD NIXON BULLEN, and also WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN, Minors, by Mary Lenore Bullen, Their Next Friend, Plaintiffs in Error,

vs.

THE STATE OF WISCONSIN, Defendant in Error.

Assignment of Errors.

And now come Mary Lenore Bullen, George Bullen, Jr., and Richard Nixon Bullen, and also William Graham Bullen and John

Nixon Bullen, minors, by Mary Lenore Bullen, their next friend, and make and file this their assignment of errors.

1. The County Court of Waukesha County, Wisconsin, erred in finding in its final judgment that the net value of the securities transferred by George Bullen through assignment in trust to the Northern Trust Company, was subject to the inheritance tax imposed by the laws of the state of Wisconsin, and erred in adjudging a tax against the net value of said securities for the reason that the beneficial interest in said securities passed at the death of George Bullen, to the plaintiffs in error, under and by virtue of the laws of Illinois, only, and not under or by virtue of the laws of Wisconsin.

36 2. The County Court of Waukesha County, Wisconsin, erred in finding in its final judgment, that the amount of the inheritance tax paid by the estate of George Bullen to the Treasurer of Cook County, Illinois, should not be deducted from the value of the securities held by the Northern Trust Company before the inheritance tax imposed on said property by the laws of Wisconsin, was determined.

3. The County Court of Waukesha County, Wisconsin, erred in entering its final judgment in so far as the same levied an inheritance tax upon the property held by the Northern Trust Company for the benefit of the plaintiffs in error, or fixed a tax on the value of said property, for the reason that said property was beyond the jurisdiction of the State of Wisconsin, and the taking of the property of the plaintiffs in error for such tax, was a taking of their private property for public use, without just compensation, and deprived them of their property without due process of law, and denied them the equal protection of the laws.

4. The County Court of Waukesha County, Wisconsin, erred in entering its final judgment in so far as the same levied an inheritance tax upon property in Illinois in the possession of the Northern Trust Company, for the reason that said property was held by the Northern Trust Company under a valid contract made by George Bullen prior to the enactment of the Wisconsin inheritance tax law that the beneficial interest in said property should pass

37–47 at his death to the plaintiffs in error under the laws of Illinois, and, therefore, the taking by the State of Wisconsin for an inheritance tax of any portion of the property so held, impaired the obligation of the said contract.

5. The Circuit Court of Waukesha County, Wisconsin, erred, for the several reasons hereinabove set forth, in entering its judgment in said cause and in remitting the same to the said County Court.

6. The Supreme Court of the State of Wisconsin erred, for the several reasons hereinabove set forth, in affirming the judgment of the Circuit Court of Waukesha County and remitting said cause.

JNO. R. MONTGOMERY,
Attorney for Plaintiffs in Error,
959 *The Rookery, Chicago.*

* * * * * * *

48 RULE.—In Petition insert below names and residence of widow, of all heirs and their kinship. Specify also who are minors and their guardians, if any.

STATE OF WISCONSIN,
Waukesha County:

To the County Court of said County:

The petition of Theron W. Haight, Public Administrator of the County of Waukesha in the State of Wisconsin, respectfully shows that George Bullen died at the Town of Summit in said County, on the 10th day of September, A. D. 1908; that he was at the time of his decease an inhabitant of said County of Waukesha; that he left personal estate in said State to be administered amounting to value unknown, and real estate in all of the probable value of $50,000, the annual rents and profits of which are also unknown; that said deceased left him surviving as his next of kin and heirs at law the following named persons, to-wit:

Mary Lenore Bullen	residing at	Oconomowoc	and being	widow	of deceased
George Bullen, Jr.	residing at	"	and being	son	of deceased
Richard Nixon Bullen	residing at	"	and being	son	of deceased
Wm. Graham Bullen	residing at		and being	son	of deceased
John Nixon Bullen	residing at	"	and being	son	of deceased

of whom the two last mentioned are minors, and all the rest of adult age.

That more than 60 days have elapsed since the demise of said George Bullen; that no application has hitherto been made for administration upon his estate and that said estate appears to come under the provisions of the inheritance tax laws of the State of Wisconsin. Your petitioner further shows that said estate or a portion or portions thereof subject to said inheritance tax laws was before the death of said deceased transferred by him to the Northern Trust Company a corporation having its place of business in the City of Chicago, Illinois, in contemplation of his death without the adjustment and payment of the inheritance taxes and no application for such adjustment has yet been made.

Your petitioner further shows that he is Public Administrator of the County of Waukesha in the State of Wisconsin.

Wherefore your petitioner prays that Letters of such general or special Administration of the estate of the said deceased may be granted unto him, as Public Administrator of Waukesha County, Wisconsin, according to law, as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provide- by law.

Dated July 13, A. D. 1909.

THERON W. HAIGHT.

STATE OF WISCONSIN,
Waukesha County, ss:

Theron W. Haight, the petitioner above named, being duly sworn, deposes and says that he has read the foregoing petition by him sub-

scribed, and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true.

THERON W. HAIGHT.

Subscribed and sworn to before me this 13 day of July, A. D. 1909.

M. S. GRISWOLD,
County Judge.

49 [Endorsed:] State of Wisconsin. Waukesha County Court. In the Matter of the Estate of George Bullen, Deceased. Intestate. Petition of Public Adm'r for Administration for purpose of adjustment of inheritance tax. Filed this 14th day of July, 1909. M. S. Griswold, County Judge.

50 STATE OF WISCONSIN,
Waukesha County:

In County Court.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

On reading and filing the petition of Theron W. Haight, Public Administrator of the County of Waukesha in the State of Wisconsin, representing among other things that George Bullen an inhabitant of the Town of Summit, county of Waukesha and state of Wisconsin, on the tenth day of September A. D. 1908, at said town of Summit died intestate, leaving goods, chattels and estate within this state to be administered; That more than sixty days have elapsed since the demise of said deceased; that no application has hitherto been made for administration upon his estate; that said estate appears to come under the provisions of the inheritance tax laws of Wisconsin; that said estate or a portion or portions thereof subject to said inheritance tax laws was before the death of the said deceased transferred by him to the Northern Trust Company, a corporation having its place of business in the City of Chicago, Illinois, in contemplation of his death without the adjustment and payment of the inheritance taxes and no application for such adjustment has yet been made; and further that he is the Public Administrator of the County of Waukesha in the State of Wisconsin, and therefore praying that such general or special administration of said estate may be granted unto him as such Public Administrator as may be necessary for the purpose of the adjustment and payment of the inheritance taxes provided by law.

It is ordered, That the said application be heard before said Court at a regular term thereof to be held at the Court House in the City of Waukesha in said county, on the first Tuesday of September A. D. 1909, being the seventh day of said month, at 10 o'clock in the forenoon of said day, or as soon thereafter as the parties can be heard.

And it is further ordered, That notice of said hearing be given to all persons interested in said estate by publishing a copy of the

notice thereof required by the laws of Wisconsin three weeks successively, previous to the time appointed for said hearing, in the Waukesha Freeman a weekly newspaper printed and published in said county, at least thirty days before the date fixed for said hearing, and also by mailing a copy of said notice to each of the parties interested in said estate within the same limitation of time.

Dated July 14, A. D. 1909.

By the Court:

M. S. GRISWOLD,
County Judge.

51–55 [Endorsed:] State of Wisconsin, Waukesha County Court. In the Matter of the Estate of George Bullen, Deceased, Intestate. Order for Hearing Petition for Administration for Adjudgment of Inheritance Tax, etc. Filed this 14th day of July, A. D. 1909. M. S. Griswold, County Judge. Recorded in Vol. 73, Page 241.

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56 STATE OF WISCONSIN,
County of Waukesha, ss:

In the County Court of Waukesha County.

In Probate.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

Now come Mary Leonore Bullen and George Bullen, Jr., by their attorneys, Ritsher, Montgomery, Hart & Abbott, and Frame & Blackstone, and in answer to the petition of the Public Administrator of Waukesha County, Wisconsin, praying for general or special administration upon the estate of George Bullen, deceased, for the purpose of the adjustment and payment of the inheritance taxes upon the estate of said George Bullen, deceased, as are provided by law, and say:

Said Mary Leonore Bullen and George Bullen, Jr., admit that George Bullen died at the Town of Summit, Waukesha County, Wisconsin, on the 10th day of September, 1908, at said time an inhabitant of said County of Waukesha, leaving an estate in said State. That more than sixty days have elapsed since the demise of said George Bullen, and that no application has hitherto been made for administration upon his estate; that said deceased at the time of his death had on deposit to his own credit, and in his own name, the sum of Twelve Thousand, One Hundred Seven Dollars and
57 Two Cents ($12,107.02) with The Northern Trust Company of Chicago, Illinois, and the further sum of Two Dollars and Seventy-Five Cents ($2.75) with the Corn Exchange National Bank, also of Chicago, Illinois, which said sums appear to come under the provisions of the inheritance tax laws of the State of Wisconsin.

It is hereby further admitted, therefore, that there is sufficient ground and reason for the granting of such Special Administration to the Public Administrator as may be necessary for the purpose of adjustment and payment of the inheritance tax found to be due in said estate, and they consent thereto.

Said answering heirs also admit that deceased left him surviving as his heirs at law and next of kin the following named persons, to-wit:

Mary Lenore Bullen, his widow, age 45 years at Mr. Bullen's death.

George Bullen, Jr., a son, born February 17, 1887.

Richard Nixon Bullen, a son, born August 26, 1890.

William Graham Bullen, a son, born December 24, 1896.

John Nixon Bullen, a son, born September 27, 1897.

It is also expressly admitted that a part or portion of the estate of said deceased, was, prior to the death of said George Bullen transferred to The Northern Trust Company without the adjustment or payment of any inheritance tax thereon, but it is expressly denied that said transfer was made in contemplation of death, or that the property transferred to said The Northern Trust Company is subject to any tax whatsoever under the inheritance tax laws of the State of Wisconsin, and these defendants further answering say that if the State of Wisconsin, or its officials, should levy and collect any inheritance tax upon said property transferred to The Northern Trust Company by said decedent other than the
58 real estate and chattels located in Wisconsin, the said State would thereby take the private property of these defendants for public use without just compensation, and would deprive these defendants of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and The Northern Trust Company in violation of the Constitution of the United States, and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin.

As to all other material allegations and matters in said petition alleged not expressly admitted, these defendants deny the same.

Wherefore, these defendants consent to the granting of the prayer of said petition, and to the appointment of said Theron W. Haight as Public Administrator for the purposes asked.

FRAME & BLACKSTONE,
RITSHER, MONTGOMERY,
HART & ABBOTT,
Att'ys for Mary Lenore Bullen and George Bullen.

59–67 [Endorsed:] In the County Court of Waukesha County. In Probate. In re Estate of George Bullen, Deceased. Answer of Mary Lenore Bullen et al. Received and by permission of the Court filed as Substitutionary for former answer this December 16, 1909, said former answer being one which was filed October 13, 1909. M. S. Griswold, County Judge.

* * * * * * *

68 In County Court, Waukesha County, State of Wisconsin.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and of the Determination of the Transfer Tax Thereon.

At a special term of said court, commencing on the third Tuesday of December, A. D., 1909, and on the 30th day of ——, A. D. 1909.

Present, Hon. M. S. Griswold, County Judge.

Under proceedings duly had in said court, pursuant to Chapter 44 of the Laws of Wisconsin for 1903, and the acts amendatory thereof, special administration of the Estate of George Bullen, deceased, having, on the 13th day of October, 1909, been granted by said court to Theron W. Haight, the public administrator of said county of Waukesha, for the purpose of the adjustment of the inheritance or transfer tax as to said estate provided by law, and payment thereof, and thereupon on said 13th day of October, 1909, an order having been duly entered in said court in the matter of said estate, and on motion of said special administrator directing among other things that said court do itself without an ap-
69 praiser and upon evidence to be submitted determine the cash value of said estate and the interest therein of each such beneficiary whose interest appears as possibly subject to such tax, and the amount of tax to which each such interest is subject to and is liable to pay at the special term of said court to be held at the Court House on the 5th Tuesday, being the 30th day of November, A. D., 1909, at ten o'clock in the forenoon of said day or as soon thereafter as parties then appearing could be heard, and under such order and notices duly given the said matter of the valuing of the estate of said deceased, and the determination of such tax having come on for hearing before said court on said 30th day of November, A. D., 1909, and such hearing having been from time to time adjourned until this day, and the same now coming on to be finally disposed of, at the sundry adjourned hearings heretofore had, evidence as to said estate and the conditions and values thereof, and beneficiaries therein interested having been fully taken and submitted, appearing on all hearings had the said public administrator, now special administrator of said estate for the purpose of such tax, and the Attorney General of Wisconsin by A. C. Titus, Assistant Attorney General, for the State of Wisconsin, and Mary Lenore Bullen, widow of said deceased, and George Bullen, Jr., adult child of said deceased, appearing by Messrs. Ritsher, Montgomery, Hart & Abbott and Messrs. Frame & Blackstone, their attorneys, contesting especially the imposition of any transfer tax upon the assets originally of said deceased in the hands of the Northern Trust Company, and held by said company as is claimed under certain trust assignments hereinafter referred to, and also appearing
70 Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, the minor children of said deceased, by C. W. Newberry, Esq., their duly appointed guardian ad litem, and con-

curring in all the objections taken herein on the part of said widow and adult child of said deceased, and counsel having been fully heard as to all matters in controversy herein and due notice of said proceedings, and of this present hearing for the final disposition of said matter having been given to all persons interested as required by law, and the orders of said court, and the court being now fully advised and satisfied in relation to all questions involved herein, the court now here under all the evidence taken and submitted, the same including the stipulation on the part of parties appearing filed herein on the 1st day of December, 1909, makes its findings of Fact and Law and order for judgment herein as follows, to wit:

Findings of Fact.

I.

That said George Bullen, deceased, died on the 10th day of September, A. D., 1908, at his home near Oconomowoc in said County of Waukesha, and being at the time of his death a legal resident and inhabitant of said County of Waukesha in Wisconsin, and no proceedings have been had in any court for the probate or administration of the estate of said deceased, other than the proceedings now here pending wherein said Theron W. Haight, the public administrator of said county, has been granted special adminis-
71 tration for the purposes of the transfer tax in said estate.

II.

That said deceased was for several years next preceding his death, and commencing at a period prior to 1902, and thence on continuously to the time of his death afflicted with the disease known or called Ataxia Locomotor, a disease commonly regarded as incurable and liable to result in paralysis and death at any time sooner or later.

III.

That on December 11th, 1902, the said George Bullen made, executed and delivered to the Northern Trust Company of Chicago, Illinois, a corporation organized and existing under the laws of the State of Illinois an instrument in writing assigning to said company certain real and personal properties and assets as shown by schedule thereto annexed in trust for the purposes in such assignment expressed, a copy of which said assignment and schedule of said properties marked Exhibit A, and annexed to stipulation filed herein December 1, 1909, is in evidence herein, and to which reference is hereby made for all purposes as to its contents as if fully incorporated herein.

IV.

That at the time of the execution of said trust assignment, December 11th, 1902, all the personal assets consisting of bonds, mortgages,

notes, certificates, trust deeds, guarantees, stocks and evi-
72 dences thereof and Life Insurance Policies enumerated in
schedule annexed to such assignment were made over and
delivered to the said Northern Trust Company to hold thereafter
under such trust assignment, that in fact the said company then took
possession of all personal assets scheduled in such schedule, except-
ing the personal estate or chattel property of said George Bullen ap-
purtenant to his house and farm known as "Minnewoc", in Waukes-
ha County, Wisconsin, but of the real estate included in terms in
such assignment, said company did not take possession of said real
estate of said George Bullen, situate in said County of Waukesha.

V.

That in and by said trust assignment made December 11th, 1902, the said George Bullen expressly reserved to himself the right to direct and control the disposition of all said trust property and estate, to revoke and vacate the trust at any time during his life, to repossess himself of said trust estate or any part thereof, and dispose of the same as he might see fit, both as to the principal of said trust estate and the income thereof, and that in fact he did thereafter from time to time repossess himself of portions of said trust estate, and on May 29th, 1907, he made, executed and delivered to said Northern Trust Company an instrument in writing of that estate denominated "Further Assignment in Trust," and a copy whereof is also annexed to the aforesaid stipulation and is in evidence herein
and being marked Exhibit C, in said stipulation and wherein
73 he makes reference to said trust assignment made by him
December 11th, 1902, and recites that prior to January 1st, 1904, he had repossessed himself of the personal property transferred by said former assignment in trust, but had permitted said instrument to remain in force and effect with the purpose of transferring certain real estate to said company subject to the trusts set forth in said assignment, and then assigns and transfers to said company all those certain life insurance policies, bonds, notes, shares of stock and other personal property particularly described in schedule A attached to said further assignment, in trust for the uses and purposes, and subject to the conditions mentioned in said assignment bearing date, December 11, 1902, and with the same rights and powers as though said property had been included in the original transfer in trust and that he had not repossessed himself of the same,—and ever since the making of said further assignment in trust May 22nd, 1907, said company as trustee under said trust assignments has been in the manual possession and control of all the stocks, securities, policies of insurance, and personal property as set forth in said schedule accompanying said last assignment, and other personal assets superseding the same except the chattel property, appurtenant to said home and real estate of George Bullen in Waukesha County, Wisconsin, and except as some parts thereof may have been returned to George Bullen thereafter and by him used, disposed of or converted in his life time, and at the time of the death of said George

Bullen on September 10th, 1908, said Northern Trust Company as trustee under and by virtue of said assignments had in its possession and duly assigned to it by said George Bullen personal
74 property and personal assets of said Bullen as set forth and enumerated in Exhibit B, annexed to and being a part of the aforesaid stipulation and enumerated in items therein numbered from 1 to 25 inclusive; that the fair reasonable market value of the 1911½ shares of capital stock of the Freemont Land & Improvement Company mentioned in item 1 in said schedule B, at the time of the death of said deceased was $143,625.00 being seventy five per cent of the par value thereof, and the fair, reasonable market value of the remaining items of personal property and assets in said schedule enumerated from items 2 to 25 therein inclusive, is the valuation thereof as written in said schedule and the fair reasonable market value of all the personal property and assets as set forth in said schedule from items 1 to 25 inclusive was at the death of said deceased in all $961,761.70 including the life insurance policy of $25,000.00 noted in item 22 of said schedule, which said policy being a policy payable to Mary Lenore Bullen, who was the wife of said deceased, and not in the opinion of the court having been lawfully assigned to her, so as to effectually *to* divest her rights under the same, the court finds should be deducted from said $961,761.70, and so deducting the value of said policy at $25,000.00 the fair market value of the personal property of said George Bullen in possession of said Northern Trust Company, as trustee at the time of the death of said George Bullen and for the purposes of consideration herein was only $936,761.70 and from the same there is fairly and equitably to be deducted the following sums for
75 liabilities, towit:

For debts of deceased paid by said company.....	$5,960.37
" taxes due at the death	4,775.69
" claims justly due said Company for services.....	10,000.00
" Attorneys' fees, deemed reasonable.....	5,000.00
In all	$25,736.06

and making such deductions, the fair, clear market value of such personal property and assets in the hands of said Company at the death of said deceased amounts to the sum of $911,025.64; and in this connection the court further finds that while said George Bullen resided in said County of Waukesha continuously from about 1892 to the time of his death, he was originally a resident of Chicago, Illinois, and continuously to his death he transacted business, to some extent at least, at said city of Chicago, and it does not appear nor can it be shown so far as now appears that he ever kept any of the securities or evidences of stocks or other assets set forth in the schedules herein before referred to outside of said City of Chicago, but prior to December 11th, 1902, he kept all his securities in a safety deposit value in Chicago, and since that said Company has had the manual possession thereof, so far as the said Bullen may

not have repossessed himself of the same and used or converted them to his own use or otherwise have disposed of the same and such manual possession of such securities on hand at death of said George Bullen was held by said Company as trustees of said Bullen under the trust assignments hereinbefore mentioned, and particularly under that made and executed May 22nd, 1907, as hereinbefore mentioned.

VI.

76 That said Northern Trust Company holds also possession and control under said trust assignments and under transfers to it made for the purposes of said trust in it reposed certain real estate in Missouri of the fair value at the time of the death of said George Bullen of $42,000.00, that among the beneficiaries named in said trust assignment made December 11, 1902, are Lucy E. Cleghorn, a niece of said George Bullen, 45 years of age at his death, and Annie Graham, a sister of said George Bullen, 67 years of age at his death, and for each of them is provided by said trust assignments, an annuity of $900.00 a year for life, payable from the income of said properties so as aforesaid, held by said Company, real and personal as hereinbefore found, in trust at the death of said deceased, and the proportionate part of each such annuity chargeable upon the said clear value of personalty held in trust by said Company at the death of said deceased meaning said hereinbefore mentioned sum of $911,025.64 or its income is $860.337, and that the present worth of such annuity to Lucy E. Cleghton at the death of said deceased is $10,997.69, and said present worth of such annuity to said Annie Graham at the death of said deceased is $5,902.57, and the sum of such values of said annuities, same being $16,900.20, deducted from said $911,025.64 leaves the sum of $894,-125.44 as clear value of said personalty in hands of said trust company at the death to be apportionable among the widow and four children of said deceased.

VII.

That under said trust assignments and for the purposes of these proceedings, said widow must be considered as having an interest equivalent to the income of one third of said hereinbefore
77 last mentioned sum, $894,125.44, during her life, that her age at the death of said deceased was 45 years, and the value of her interest in said total sum of $894,125.44 at the death of said deceased is $190,493.44, and this deducted from said $894,-125.44, leaves the sum of $703,632.00 of such personalty held in trust as the clear values of the interests therein of said four children of said deceased, making the clear value of the interest of each of them therein at the death of deceased $175,908.00

VIII.

That while in the making of said trust assignments and transfers of property thereunder in trust by said assignments and deeds of transfer, said George Bullen did attempt to transfer to said trust

company his real estate, being in Waukesha County, Wisconsin, the same being one tract of land of about 95 acres and on which he resided and had his home with his family, his wife Mary Lenore Bullen never joined with him in any deed or transfer of said real estate or in any way executed any instrument relinquishing her rights of dower and homestead therein and said company never took possession or sought to take possession or control of said real estate under any assignment or deed to it executed, and the wife of said George Bullen never having joined with him in any transfer of such property, all such attempted transfers are under the statutes of this state to be taken as void and ineffectual to pass title to said Trust Company, and for the purposes of these proceedings said real estate in Waukesha County must be taken and deemed as on the death of said deceased having descended to and vested in the
78 said four children of said deceased as his sole heirs at law subject to dower and homestead rights therein of said wife of deceased, that the fair market value of such real estate at the death of said deceased is $56,000.00 that the value of the interest of said Mary Lenore Bullen, widow of deceased for her dower and homestead interest therein, at the death, making computation on basis of value of $5,000 for homestead and one third of the remaining $51,000 of value of said property, or $17,000 with respect to dower, and her age at the death of deceased being 45 years is $14,061.28, such being the present worth of life estate in property valued at $22,000.00, the sum of said $5,000.00 and $17,000, for one at the age of 45 years, and deducting said $14,061.28 from said total value of said real estate, $56,000, leaves $41,938.72, as the value of the interests of said four children of deceased at his death in said real estate, or $10,484.68, as the clear value of the interest therein of each of them at the death of said deceased.

IX.

That there was in the possession of said deceased and situated on his said homestead farm in Waukesha County, Wisconsin, at the time of his death chattel property, as books, pictures, household furniture and equipment, carriages, wagons, implements, boats, horses and other live stock and chattel property appurtenant to his said farm and home of the then fair value of $20,000, that while said George Bullen by his said trust assignments purported to transfer and assign said chattel property to said company in trust, he never made manual delivery thereof, and said company
79 never took possession of any part thereof, or attempted to exercise any control or dominion over the same, the same being in Wisconsin, and said company not having been qualified or authorized to do business in the state of Wisconsin; and also there was at the death of said deceased moneys in Chicago to the amount and value of $12,109.75 belonging to said deceased and subject to his check and not held by said company in trust under said assignments, and said sum last mentioned together with the value of said chattel property in Waukesha County, $20,000.00, as above

stated, and making together $32,109.75 is to be deemed and taken for the purposes of the proceedings as passing on the death of said deceased to his said widow and four children in equal shares of one-fifth, or $6,421.95 to each.

X.

That gathering up and summarizing the clear values of the interests of said widow and four children of said deceased at his death in said real estate in Waukesha County and said chattel property in Waukesha County and said $12,109.75 moneys in Chicago, as hereinbefore found such values may be tabulated as follows as to said real estate moneys and chattel property.

Relationship.	Parties taking such interests.	Interests of each in realty.	Interests of each in personalty.	Total of interests in both realty and personalty.
Widow..	Mary Lenore Bullen.....	$14,061.28	$6,421.95	$20,483.23
Child....	George Bullen, Jr.....	10,484.68	6,421.95	16,906.63
"	Richard Nixon Bullen....	10,484.68	6,421.95	16,906.63
"	Wm. Graham Bullen.....	10,484.68	6,421.95	16,906.63
"	John Nixon Bullen.....	10,484.68	6,421.95	16,906.63
Totals		$56,000.00	$32,109.75	$88,109.75

80

XI.

That gathering up and summarizing the clear values of the interests of said widow and four children of said deceased at his death and the annuitants Lucy F. Cleghorn and Annie Graham in the personalty held by said Trust Company at the death of said deceased as hereinbefore found, such values may be tabulated and succinctly expressed as follows:

Beneficiaries.	Relationship.	Clear value of interests of each
Lucy E. Cleghorn	Niece.....	$10,997.69
Annie Graham	Sister.....	5,902.51
Mary Lenore Bullen	Widow.....	190,493.44
George Bullen, Jr.	Child.....	175,908.00
Richard Nixon Bullen	"	175,908.00
Wm. Graham Bullen	"	175,908.00
John Nixon Bullen	"	175,908.00
Total of such clear values.....		$911,625.64

which total corresponds to the clear value of all such personalty in the possession and control of said trust company at the death of said deceased as hereinbefore found.

81

XII.

That gathering up, combining and summarizing the clear values of the interests of all beneficiaries, naming said widow and four

children of deceased and said Lucy E. Cleghorn and Annie Graham in all the properties and assets included in and referred to in the two last proceeding findings, such clear values at the death of said deceased of the several beneficiaries in the total of said properties and assets may be tabulated and expressed as follows:

Beneficiaries.	Relationship.	Clear value of interest of each in property, exclusive of that held in trust under trust assignments.	Clear value of interest of each in personalty held in trust under trust assignments.	Total of clear values of each in all said properties.
Lucy E. Cleghorn	Niece	.....	$10,997.69	$10,997.69
Annie Graham	Sister	.....	5,902.51	5,902.51
Mary Lenore Bullen	Widow	20,483.23	190,493.44	210,976.67
George Bullen, Jr.	Child	16,906.63	175,908.00	192,814.63
Wm. Graham Bullen	"	16,906.63	175,908.00	192,814.63
Richard Nixon Bullen	"	16,906.63	175,908.00	192,814.63
John Nixon Bullen	"	16,906.63	175,908.00	192,814.63
Totals		$88,109.75	$911,025.64	$999,135.39

82

XIII.

—That said George Bullen made the trust assignments referred to in the foregoing findings in contemplation of death, and to take effect at and after his death as to all that might remain of the trust estate on hand at the time of his death, and particularly did he so make the said "Further Assignment in Trust" of date of May 22nd, 1907, in contemplation of death, he having formerly repossessed himself, as the court finds and as admitted in the recitals in said "Further Assignments in Trust" of the trust estate previously assigned, and the prior assignment in effect continuing in force only as expressive of the trust invented by said later assignment and as interpretative as to the conditions and intent thereof, and of all said properties and assets transferred by said trust assignments, said George Bullen under the terms even of said assignments retained full dominion and control for all purposes up to the time of his death, notwithstanding the holding by said Northern Trust Company of the securities, policies, stocks or evidences thereof and other assets as hereinbefore found in its manual possession prior to death of said George Bullen by reason of same having been turned over and passed to its possession by him in connection with the making of such assignments.

83

XIIII.

That in case said personal property and assets in the hands of said Northern Trust Company as trustee at the time of the death of said George Bullen as hereinbefore found is subject herein to transfer tax under the Laws of Wisconsin, as well as said real estate in Wisconsin and other personal estate, then the clear value of all such properties and assets in the aggregate, and the clear values of the

interests therein of the beneficiaries respectively, the exemption from such tax allowable and the tax allowable against such interests computing the same at the rates prescribed by law, and all as tabu lated and set forth as follows, to wit:

Beneficiaries.	Relationship.	Clear value of interest of each.	Amount exempt from tax.	Amount to taxed.	Tax.
Lucy E. Cleghorn.....	Niece..	$10,997.69	$500	$10,497.69	$157.4
Annie Graham.....	Sister.	5,902.51	500	5,402.51	81.0
Mary Lenore Bullen....	Widow	210,976.67	10,000	200,976.67	4,149.4
George Bullen, Jr.....	Child..	192,814.63	2,000	190,814.63	3,895.3
Richard Nixon Bullen..	" ..	192,814.63	2,000	190,814.63	3,895.3
Wm. Graham Bullen...	" ..	192,814.63	2,000	190,814.63	3,895.3
John Nixon Bullen.....	" ..	192,814.63	2,000	190,814.63	3,895.3
Totals of Clear Values..		$999,135.39		Total...	$19,969.3

84 And as conclusion of Law from all the facts hereinbefor found and under the evidence submitted, the court finds tha all said estate, including not merely said real estate in Waukesh County, Wisconsin, and said chattel property in said county at th time of the death and said moneys in Chicago subject to check ac count, but inclusive as well of said personal estate and assets, hi deductions allowed for, in the possession of said Northern Trust Com pany at the time of death of said deceased, as hereinbefore found is subject to transfer tax under the laws of Wisconsin, to wit, unde the provisions of Chapter 44 of the Laws of 1903 of Wisconsin, an the acts amendatory thereof, and that the order and judgment o this court should now be made determining and assessing such ta upon the clear values of the several interests of the beneficiaries o such estate as hereinbefore found and valuing those interests an fixing such tax in conformity to the last above Finding of Fact herein, and the computations of values, exemptions, taxable amount and tax as set forth therein.

Let order and judgment be made accordingly in conformity t the above findings and according to law.

Dated Dec. 30th, 1909.

By the Court,

M. S. GRISWALD,
County Judge.

85 [Endorsed:] Waukesha County Court, Waukesha County Wis. In Estate of George Bullen, Deceased. Findings o Fact and Law in Matter of Determination of Transfer Tax. Filed Dec. 30, 1909. M. S. Griswold, County Judge. Filed Mar. 14 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

86 In County Court, Waukesha County, State of Wisconsin.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and of the Determination of the Transfer Tax Therein.

At a special term of said court begun on the third Tuesday of December, A. D. 1909, and on the 30th day of December, A. D. 1909.

Present Hon. M. S. Griswold, County Judge.

Under proceedings duly had in said court pursuant to Chapter 44 of the Laws of Wisconsin for 1903 and the Acts amendatory thereof special administration of the estate of George Bullen, late of said County of Waukesha in Wisconsin, deceased, having on the 13th. day of October, 1909, been granted to Theron W. Haight, the public administrator of said County of Waukesha, for the purpose of the adjustment and payment of the inheritance or transfer tax on said estate, and pursuant to the order of said court made and entered on said 13th. day of October, 1909, and to notice duly given to all persons interested in conformity to law and the orders of said court, proofs whereof have been made and filed and pursuant to sundry adjournments from time to time on the several hearings had for the purpose of the determination of such transfer tax to this day the matter of the valuing of said estate and of the determination of such tax now this day coming on to be finally heard and disposed of upon the proofs which have been heretofore taken and submitted before said court and pursuant to said order and notices given, having appeared at all hearings had in said matter and also now appearing the said special administrator who is the public administrator also, and also the Attorney General of the State of Wisconsin for the State, and Mary Lenore Bullen, widow of said deceased, and George Bullen, Jr., the adult heir and child of said deceased, by Messrs. Risher, Montgomery, Hart & Abbott and Messrs. Frame & Blackstone, their attorneys, contesting especially the imposition of any transfer tax upon the assets and personal estate of said deceased in the hands of the Northern Trust Company, a corporation of Chicago,
87 Illinois, at the time of the death of said deceased, and also appearing Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, the minor children and heirs of said deceased, by C. W. Newberry, Esq., their duly appointed guardian ad litem herein, and testimony having been fully taken and evidence submitted as to all the estate of said deceased and its value, character and situation at the time of his death which death occurred on the 10th day of September, A. D. 1908, and as to all questions of fact involved herein, and counsel having been fully heard and the court now here having duly made and filed its Findings of Facts and Conclusions of Law herein, finding fully as to the estate of said deceased at the time of his death and as to values thereof, both as to real estate in Wisconsin, as to personalty at the time of his death in the hands of the said Northern Trust Company, and as to all other

personalty, and as to clear values of the interests of the several beneficiaries thereof, and having at the conclusion of such Findings directed order and judgment fixing such values and determining the transfer tax thereon in conformity to such findings and as therein found to be.

Now therefore, in conformity to such findings of fact and conclusions of law so made as aforesaid, the Court now here finds, determines, adjudges and decrees that all the property of said decedent, George Bullen, both real and personal, held and owned by him at the time of his death and subject to transfer tax under the laws of Wisconsin and the clear, net, cash and market value of such property is as follows:

Clear Value of Real Estate in Wisconsin.....	$56,000.00
Clear value of personal property and assets in hands of Nothern Trust Company at the death under certain trust assignments made by said Bullen as the court finds in contemplation of and to take effect after death	911,025.64
Clear value of other personal property..... ..	32,109.75
Making a total of clear values to amount of....	$999,135.39

And the Court further finds, determines, adjudges and decrees that the persons interested in said properties and estate of decedent as the beneficiaries therein and to whom the same is to be deemed as transferred and the names and relation-ships of all such persons entitled to such interests and the clear values of their respective interests
88 therein and the exemptions they are severally entitled to and the transfer tax assessable upon such interests and the amounts and proportions of such tax to which each such interest is liable are as follows, to-wit:

Beneficiaries.	Relationship.	Clear value of interest of each.	Amount exempt.	Amount taxable.	Amount of tax.	Rate of tax.
Lucy E. Cleghorn	Niece	$10,997.69	$500	$10,497.69	$157.46	1½%
Annie Graham	Sister	5,902.51	500	5,402.51	81.03	1½%
Mary Lenore Bullen	Widow	210,976.67	10,000	200,976.67	4,149.41	These all at rate of 1% on 1st $25,000, 1½% on next $25,000, 2% on next $50,000, & 2½% on remainder.
George Bullen, Jr.	Child	192,814.63	2,000	190,814.63	3,895.36	
Richard Nixon Bullen	Child	192,814.63	2,000	190,814.63	3,895.36	
Wm. Graham Bullen	Child	192,814.63	2,000	190,814.63	3,895.36	
John Nixon Bullen	Child	192,814.63	2,000	190,814.63	3,895.36	
Total of Clear Values		$999,135.39	Total Tax		$19,969.34	

Wherefore it is ordered and adjudged further that such tax be and same is hereby fixed and determined as above and that said Theron W. Haight as special administrator for the purposes of the adjustment and payment of such tax be and he is hereby authorized to proceed forthwith to pay such tax out of any estate that may have come to his hands from which to pay the same, and in case there be no such estate in his hands or possession wherewith now to pay such tax, he be and he is hereby authorized to take all necessary and proper proceedings and as he may be advised to collect and enforce payment of such tax so as above fixed and determined, such payment when made to be made to the County Treasurer of said County of Waukesha, the whole amount of such tax being Nineteen Thousand Nine Hundred and Sixty Nine Dollars and thirty-four cents ($19,969.34), the tax so as above fixed being subject to draw and have interest added thereto at the rate of ten per cent per annum from the date of the death of said George Bullen, deceased, September 10th, 1908, if not paid within eighteen months from the said date of the death of deceased.

And it is further ordered that notice hereof be given to the parties interested including County Treasurer and State Treasurer by
89 delivery personally or mailing to them and each of them a copy of this order.

Dated December 30, 1909.

By the Court,

M. S. GRISWOLD,
County Judge.

90 [Endorsed:] In County Court Waukesha County, Wis. In Estate of George Bullen, Deceased. Order and Judgment Valuing Estate and Determining Transfer Tax. Filed Dec. 30, 1909. M. S. Griswold, County Judge. Copies mailed by me to St. Trs. & Co. Trs. Jan. 4, 1910. M. S. Griswold. Recorded Vol. 73 pp. 258. Filed Mar. 14, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

91 STATE OF WISCONSIN,
County Court, Waukesha County:

In the Matter of the Estate of GEORGE BULLEN, Deceased.

Now come Mary Lenore Bullen and George Bullen Jr., by their attorneys, Ritsher, Montgomery, Hart & Abbott and Frame & Blackstone, and also Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, by their guardian as litem C. W. Newbury, and do severally and separately state make and file their exceptions in writing to the findings of fact and conclusions of law as made and entered by the County Court above named in the above entitled matter on the 30th day of December, 1909; all each and every one of said parties again objecting and excepting to said findings and conclusions of law upon the ground heretofore stated argued and presented during said trial, to-wit that the property upon which said tax in said estate is levied was transferred to the Northern Trust

Company a corporation of Illinois and was in the hands of said corporation at the date of the death of said deceased, and that if the State of Wisconsin or its officers should levy and collect any inheritance tax upon said property transferred to The Northern Trust Company by said decedent other than the real estate and chattels located in Wisconsin, the said State would thereby take the private property of the aforesaid parties for public use without just compensation, and would deprive these said parties of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and The Northern Trust Company in violation of the Constitution of the United States, and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin.

1.

Said above named parties and each of them hereby except to the second finding of fact herein to-wit: "That said deceased was for several years next preceding his death, and commencing at a period prior to 1902, and thence on continuously to the time of his
92 death afflicted with the disease known or called Ataxia Locomotor, a disease commonly regarded as incurable and liable to result in paralysis and death at any time sooner or later," and to the whole and every part thereof, for the reason that the same is contrary to the evidence given on said trial.

2.

Said above named parties and each of them hereby except to so much of the fifth finding of fact which reads as follows: "and that in fact he did thereafter from time to time repossess himself of portions of said trust estate, and on May 29th, 1907 he made, executed and delivered to said Northern Trust Company an instrument in writing of that estate denominated "Further Assignment in Trust," * * * "and wherein he makes reference to said trust assignment made by him December 11th, 1902," * * * "and ever since the making of said further assignment in trust May 22nd, 1907, said company as trustee under said trust assignment has been in the manual possession and control of all the stocks, securities, policies of insurance and personal property as set forth in said schedule accompanying said last assignment, and other assets superseding the same except the chattel property appurtenant to said home and real estate of George Bullen in Waukesha County, Wisconsin, and except as some parts thereof may have been returned to George Bullen thereafter and by him used, disposed of or conveyed in his life time" * * * "and the fair, reasonable market value of the remaining items of personal property and assets in said schedule enumerated from items 2 to 25 therein inclusive, is the valuation thereof as written in said schedule" * * * "and making such deductions, the fair clear market value of such personal property and assets in the hands of said Company at the death of said deceased amounts to the

sum of $911,025.64," excepting to each and every part thereof as well as to the whole thereof, for the reason that said findings so excepted to are contrary to law and the evidence taken on the trial.

3.

Said above named parties and each of them hereby except to that portion of the sixth finding of fact which reads as follows, to-wit:

"that among the beneficiaries named in said trust assignment
93 made December 11, 1902, are Lucy E. Cleghorn, a niece of said George Bullen, age 45 years at his death, and Annie Graham, a sister of said George Bullen, 67 years of age at his death, and for each of them is provided by said trust assignment, an annuity of $900.00 a year for life, payable from the income of said properties so as aforesaid, held by said Company, real and personal as herein before found, in trust at the death of said deceased, and the proportionate part of each such annuity chargeable upon the said clear value of personalty held in trust by said Company at the death of said deceased meaning said hereinbefore mentioned sum of $911,025.64 or its income is $860.337, and that the present worth of such annuity to Lucy E. Cleghorn at the death of said deceased is $10,997.69 and said present worth of such annuity to said Annie Graham at the death of said deceased is $5,902.57 and the sum of such values of said annuities, same being $16,900.20 deducted from said $911,025.64 leaves the sum of $894,125.44 as clear value of said personalty in hands of said trust company at the death to be apportionable among the widow and four children of said deceased," and to the whole thereof as well as to each and every part thereof, for the reason that the same is contrary to law and the evidence taken upon said trial.

4.

Said above named parties and each of them hereby except to the seventh finding of fact as follows, to-wit:

"That under said trust assignments and for the purposes of these proceedings, said widow must be considered as having an interest equivalent to the income of one third of said herein before last mentioned sum of $894,125.44 during her life; that her age at the death of said deceased was 45 years and the value of her interest in said total sum of $894,125.44 at the death of said deceased is, $190,493.44 and this deducted from said $894,125.44, leaves the sum of $703,632.00 of such personalty held in trust as the clear value of the interests therein of said four children of said deceased, making the clear value of the interest of each of them therein at the death of deceased $175,908.00" and to each and every part thereof as
94 well as to the whole thereof, for the reason that the same is contrary to law and the evidence taken upon said trial.

5.

Said above named parties and each of them hereby except to that portion of the eighth finding of fact which reads as follows, to-wit:

"that the fair market value of such real estate at the death of said deceased is $56,000, that the value of the interest of said Mary Lenore Bullen, widow of deceased for her dower and homestead interest therein, at the death, making computation on basis of value of $5,000 for the homestead and one third of the remaining $51,000 of value of said property or $17,000 with respect to dower, and her age at the death of deceased being 45 years, is $14,061.28, such being the present worth of life estate in property valued at $22,000, the sum of said $5,000 and $17,000 for one at the age of 45 years, and deducting said $14,061.28 from said total value of said real estate $56,000 leaves $41,938.72 as the value of the interests of said four children of deceased, at his death in said real estate or $10,484.68 as the clear value of the interest therein of each of them at the death of said deceased" and to each and every part thereof as well as to the whole thereof, for the reason that the same is contrary to law and the evidence taken on said trial.

6.

Said above named parties and each of them hereby except to the thirteenth finding of fact as follows, to-wit:

"That said George Bullen made the trust assignments referred to in the foregoing finding in contemplation of death and to take effect at and after his death as to all that might remain of the trust estate on hand at the time of his death, and particularly did he so make the said "further assignment in trust" of date of May 22nd, 1907, in contemplation of death, he having formerly repossessed himself as the court finds and as admitted in the recitals in said "further assignment in trust" of the trust estate previously assigned and the prior assignment in effect continuing in force only as expressive of the trust invented by said later assignment and as interpretative as to the conditions and intent thereof and of all said properties and assets transferred by said trust assignments, said George Bullen under
the terms even of said assignment retained full dominion and
95 control for all purposes up to the time of his death notwithstanding the holding by said Northern Trust Company of the securities, policies, stocks or evidences thereof and other assets as hereinbefore found in its manual possession prior to the death of said George Bullen, by reason of the same having been turned over and passed to its possession by him in connection with the making of such assignment" and to each and every part thereof as well as to the whole thereof, for the reason that the same is contrary to law and the evidence taken upon said trial.

7.

Said above named parties and each of them hereby except to the conclusion of law as follows:

"The court finds that all of said estate including not merely said real estate in Waukesha County, Wisconsin, and said chattel property in said county at the time of the death and said moneys in Chicago subject to check account, but inclusive as well of said personal estate and assets, his deductions allowed for in the possession of said North-

ern Trust Company at the time of the death of said deceased, as hereinbefore found, is subject to transfer tax under the laws of Wisconsin to-wit, under the provisions of Chapter 44 of the Laws of 1903 of Wisconsin, and the acts amendatory thereof and that the order and judgment of this court should now be made determining and assessing such tax upon the clear values of the several interests of the beneficiaries of such estate as hereinbefore found and valueing those interests and fixing such tax in conformity to the last above finding of fact herein, and the computation of values, exemptions, taxable amounts and tax as set forth therein.

Let order and judgment be made accordingly, in conformity to the above findings and conclusions of law."

For the reason that the same is based upon erroneous findings and is contrary to law, and to so levy and collect such tax upon said property transferred to the Northern Trust Company by said decedent other than the real estate and chattels located in Wisconsin would thereby take the private property of said parties for public use without just compensation and would deprive the above mentioned parties of their property without due process of law
96 and would deny them the equal protection of the laws and would also impair the obligation of the contract between George Bullen and the Northern Trust Company in violation of the constitution of the United States and of the Fifth and Fourteenth amendments thereof and in violation of the constitution and laws of the State of Wisconsin.

RITSHER, MONTGOMERY, HART & ABBOTT,
FRAME & BLACKSTONE,
Attorneys for Mary Lenore Bullen and George Bullen, Jr.
C. W. NEWBURY,
Guardian ad Litem for Richard Nixon Bullen, William Graham Bullen, and John Nixon Bullen, Minors.

97-102 [Endorsed:] Original. State of Wisconsin. County Court Waukesha County. In the matter of the estate of George Bullen, Deceased and Inheritance tax in said estate. Exceptions to findings. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for Lenore Bullen et al. Filed this 28th day of January, 1910. David W. Agnew, County Judge. Filed Mar. 14, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

* * * * * * *

103 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and Assessment of Transfer Tax Therein.

Objections of Appellants.

Now come Mary Lenore Bullen and George Bullen, Jr*d*., by their attorneys Ritsher, Montgomery, Hart & Abbott, and Frame & Blackstone, and also the appellants Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, minors by their guardian ad litem C. W. Newbury, and before the introduction of any testimony or other proceedings taken in said Circuit Court, they do hereby make and file their objections to the assessment and collection of any transfer tax upon any property transferred to the Northern Trust Company by said George Bullen in his life time, upon the ground and for the reason that if the said State of Wisconsin or its officials should levy and collect any inheritance tax upon said property transferred to The Northern Trust Company by said George Bullen, other than the real estate and chattel property located in Wisconsin, the said State would thereby take the private property of these appellants and objectors for public use without just compensation, would deprive these appellants of their property without due process of law, and would deny to them the equal protection of law, and would also impair the obligation of the contract between George Bullen and The Northern Trust Company in violation of the Constitution of the United States, and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin.

RITSHER, MONTGOMERY, HART & ABBOTT,
FRAME & BLACKSTONE,
C. W. NEWBURY,
Guardian ad Litem Rich. Nixon Bullen, Wm. Graham Bullen, and John N. Bullen, Minors.

104 [Endorsed:] Original. State of Wisconsin. Circuit Court, Waukesha County. In the Matter of the Estate of George Bullen, Deceased. Objections of Appellants to Tax. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for Mary L. Bullen, etc. Filed in Circuit Court Mar. 12, 1910. Waukesha County, Wis. E. M. Webb, Clerk. Filed In the Circuit Court Feb. 21, 1910. Dodge County, Wis. John Clifford, Clerk. Filed Mar. 14, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

105 STATE OF WISCONSIN:

In Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

This matter, which was an appeal to this court from the judgment of the county court of Waukesha County, determining the inheritance tax in the matter of the estate of George Bullen, was by agreement of the parties brought on to be heard and was heard by the court, at a special term thereof, held at the court house in the City of Juneau, in Dodge County, Wisconsin, on the twenty first day of February, 1910. Present, Hon. Martin L. Lueck, Circuit Judge.

The State was represented by A. C. Titus, Assistant Attorney General and Frame & Blackstone and Ritsher, Montgomery, Hart & Abbott appeared for Mary Lenore Bullen, widow of said deceased, and George Bullen Jr., an adult child of said deceased, and C. W. Newberry, as guardian ad litem, appeared for and on behalf of the minor children of decedent, Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen and T. W. Haight, Public Administrator of Waukesha County, appeared in behalf of Waukesha County and the State of Lucy E. Cleghorn and Annie Graham though notified of the proceeding by — in County Court did not appear in any manner and the evidence having been submitted and the court having heard argument of counsel makes the following:

Findings of Fact.

1. That George Bullen, deceased, died on the tenth day of September, 1908, at his home near Oconomowoc, in the County of Waukesha, Wisconsin, aged sixty two years, being at the time of his death a legal resident and inhabitant of said county of Waukesha, Wisconsin, and that no other proceedings have been had in this state to determine the amount of the inheritance tax upon his estate.

2. That said deceased was for several years next preceding his death, commencing at a period prior to 1902 and continuing Thence to the time of death, afflicted with a nervous disease termed "ataxia locomotor", a disease which is incurable and which is liable to result in paralysis and death at any time, and that at the time the negotiations were being conducted and at the time the several agree-

106 ments herein described were made he was aware that he was afflicted with that disease.

3. That on December 11, 1902, said George Bullen made, executed and delivered to the Northern Trust Company of Chicago, Illinois, a corporation organized and existing under the laws of the State of Illinois, an instrument in writing, assigning to said company certain real and personal property and assets shown by the schedules on file in said case, marked "Schedules A" and "B", attached to "Exhibit A," but in trust for the purposes in such assignment expressed. In pursuance of said agreement he executed and subsequently delivered

to the Northern Trust Company a deed of certain real estate, particularly described in Schedule "B," attached to Exhibit "A," but his wife did not join in the execution thereof; that in pursuance of said agreement he transferred by endorsement in blank the various certificates of stock and notes described in schedule "A," of Exhibit "A," by endorsement on said certificates and executed assignments of several insurance policies in said schedule mentioned and delivered said certificates, insurance policies and assignments thereof, and the other securities mentioned in Schedule "A," to said Northern Trust Company; that the said securities, described in said exhibits, were, at least as far back as the year 1900, kept in a safe deposit box in Chicago. That negotiations for the arrangement above referred to were begun between him and the Northern Trust Company in 1900 or 1901. The endorsements of assignment of the various stock certificates were made December 11, 1902. The securities were at that time left with the Northern Trust Company and on April 4th, 1903, the transaction was completed by the acknowledgement and final delivery of the assignment in trust; that said trust agreement contained the following clause:

"Fifth. I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and, at all events, after my death, the said income and the said principal shall be applied, paid over or held as herein provided".

3½. That on the eleventh day of December, 1902, the said Northern Trust Company receipted for the personal property and ac-
107 cepted the trust imposed by said agreement; that thereafter during his lifetime and until his death the said Northern Trust Company paid to said George Bullen and he received the income from the property conveyed by the above described instrument; that after the execution of said agreement and prior to January 1st, 1904, said George Bullen repossessed himself of the personal property transferred by said assignment in trust but permitted said assignment to remain in full force and effect for the purpose of transferring the real estate, therein described, to said Trust Company, and that afterwards to wit: on the 22nd day of May, 1907, the said George Bullen executed a further assignment in trust to said Northern Trust Company, again transferring certain personal property and the real estate which had been omitted in the first transfer and specified that the property thereby transferred and set over should be held by the said trustee upon the same trusts and conditions and with the same rights and powers as though the said property had been included in the original transfer to said Trust Company under said assignment in trust and he had not repossessed himself of the same. The said

Northern Trust Company, on the 22nd day of May, 1907, receipted for the personal property described in schedule "A," attached to said second assignment, and accepted the trusts imposed by said second assignment.

4. That said George Bullen left surviving him at his death a widow and four sons, who were his only heirs at law and next of kin; that the dates of birth and relationship to said George Bullen and the dates of birth and relationship of the several beneficiaries named in the said trust assignments and their residences are as follows:

Beneficiary.	Residence.	Relationship.	Birthday.
Mary Lenore Bullen	Waukesha Co., Wis.,	Wife	45 years old Sept. 10, 1908.
George Bullen, Jr.	" " "	Son	Feb. 17, 1887.
Richard Nixon Bullen	" " "	"	Aug. 26, 1890.
William Graham Bullen	" " "	"	Dec. 23, 1895.
John Nixon Bullen	" " "	"	Dec. 27, 1897.
Annie Graham	London, Canada,	Sister	67 years old Sept. 10, 1908.
Lucy E. Cleghorn	British Columbia	Niece (Sister's daughter)	45 years old Sept. 10, 1908.
Mary T. Harris	London, Canada,	Sister	Aug. 15, 1839.
108 Victoria Bullen	London, Canada,	Sister	Feb. 20, 1848.
Helen Mary Harris	" "	Niece (Sister's daughter)	July 11, 1860.

5. That George Bullen originally resided in Chicago, in the State of Illinois. About 1892 he removed his home to Oconomowoc but continued to transact some business in Chicago down to the time of his death; that at that time he occupied and had occupied for about fifteen years prior thereto (with his family,) the farm known as "Minnewoc," in portions of Sections 2 and 11, in Township 7 North, Range 17 East, in Waukesha County; that he owned and had in his possession at the time of his death at said Minnewoc, in Waukesha County, certain books, pictures, household furniture and equipment, and certain carriages, wagons, implements, boats, horses and other livestock and other chattel property appurtenant to said farm which was of the clear market value of $20,000. Said real estate was at the time of his death of the clear market value of $56,000.00. That at the time of his death he had on deposit in a checking account with the Northern Trust Company a sum of $12,107.02 and a like account with the Corn Exchange National Bank of Chicago of $2.75. These accounts were not held under the terms of said trust assignment prior to his death but upon his death they were placed thereunder by the Northern Trust Company and were applied upon the payment of the debts, taxes and expenses of administration of his estate.

6. That on the fourth day of April, 1903, said George Bullen made a last will and testament of the same tenor as the said assignment in trust but the same has not been probated and no letters of administration have ever been issued upon the estate of George Bullen either in Wisconsin or elsewhere, except in this proceeding.

7. That at the death of George Bullen the Northern Trust Company held under the terms of the trust assignment, Exhibit "A," the properties and securities described in the revised schedule, Exhibit "B". The clear market value of the items contained in Exhibit "B" was and is the sum of $961,761.70 (including $25,000 life insurance.) He also owned bank deposits in Chicago to the amount of $12,109.77.

8. That said Northern Trust Company, being a foreign
109 corporation and not having ever been licensed to transact business in this state, never took possession either of the real estate or personal property of the decedent situate in this state, Wisconsin, and has not attempted to exercise control thereof or administer the same as a part of the property of decedent assigned to it in trust by said agreements.

9. That at the time of said decedent's death the said Northern Trust Company held as a part of the Trust property so assigned to it fifty (50) shares of the capital stock of the Wisconsin Trust Company, a Wisconsin corporation, which it sold for $6,250.00.

10. That the securities assigned were at all times herein mentioned kept in the vault of the Northern Trust Company in Chicago, in the State of Illinois, either by said decedent, in a safety deposit box, or by the said Northern Trust Company as his agent or under said Trust Agreements. That negotiations leading up to the execution of said trust agreements were done and made either at the offices of the Northern Trust Company or at the office of decedent's attorneys in

the City of Chicago, Illinois, and said agreements were executed in Chicago, Ills.

11. That at the time the negotiations for the arrangement for the trust agreement were begun between said George Bullen and the Northern Trust Company, his wife was suffering from some nervous trouble and was in a precarious state of health. She continued to suffer from ill-health down to the date of his death. Mrs. Bullen never signed the deeds by which her husband conveyed his real estate to the Northern Trust Company. She refused to sign them unless Mr. Bullen would make some provision in said trust agreement for an income for her mother.

12. That the personal property described in Exhibit "B," attached to the stipulation, together with the Minnewoc farm above mentioned and the personal property thereon and appurtenant thereto and said bank deposits comprise all of the property of said decedent in which he had any right, title or interest at the time of his death, except certain real estate in Canada and Missouri, described in schedule "B" of Exhibit "C," annexed to the stipulation.

13. That the stock held by George Bullen in the Fremont Land & Improvement Company was acquired when the company was
110 organized. It was organized in 1899 by George Bullen and certain associates who owned real estate in Kansas City, Missouri, and it was organized solely for the purpose of handling such real estate and it possessed the powers usual to real estate corporations organized in Missouri. Its total capital stock was $500,000. That the value of decedent's stock in said company at the time of decedent's death was $143,625.00.

14. That the Policy No. 195,589 of the Northwestern Mutual Life Insurance Company for $25,000 on the life of the decedent was originally payable to Mary Lenore Bullen, his wife, but was by her assigned about the end of December, 1902, for the purpose of enabling him to turn it over to the Northern Trust Company among the securities covered by said trust assignment. The policy contained no provision authorizing a change of beneficiaries.

15. That the debts of George Bullen, at the time of his death, together with the expenses of his last illness, amounted to $5,960.37, which amount was paid out of the principal of the trust estate by the Northern Trust Company.

16. That at the time of the death of said George Bullen there was also property taxes amounting to $4,775.69 due thereon, which were at that time a lien upon the property held by the Northern Trust Company and this amount was paid by it out of the principal of the trust estate.

17. That immediately after the death of George Bullen the Northern Trust Company made a charge of $10,000 for its services in connection with the said estate, deducting said amount from the principal thereof, the same being for services up to the time of the death of said George Bullen.

18. That the attorneys for the trustee and for the beneficiaries are entitled to $5,000 for their services in the matter of attending the litigation arising upon the determination of inheritance

taxes on said estate in Illinois and Wisconsin, which is considered a reasonable fee for such services.

19. That the Northern Trust Company paid further out of the principal of said estate to the County Treasurer of Cook County, Illinois, the sum of $8,569.51 as an inheritance tax on the property of said decedent, described in Exhibit "B," imposed by the laws of the State of Illinois.

111 20. That at the time of said George Bullen's death the Northern Trust Company, among other things, held deeds of real estate situate in the State of Missouri, which were conveyed to it by said George Bullen and were held under said trust agreement; that the value of said real estate was $42,000 at the time of decedent's death.

Summary of Decedent's Property.

Estate in Illinois.

The court finds that at the time of the death of said decedent the Northern Trust Company of Chicago, Illinois, held under said trust agreement, securities exclusive of the real estate and the life insurance policy for $25,000 in the Northwestern Mutual Life Insurance Company, of the clear market value of..		$936,761.70
That the decedent had on deposit in the banks of Chicago, Illinois, moneys which were after his death taken over by the Northern Trust Company in the sum of		12,109.77
Total		$948,871.47
That there should be deducted therefrom the following:		
The charges of the Trust Company for prior services	$10,000.00	
Property taxes paid which were due at decedent's death	4,775.69	
Debts of deceased	5,960.37	
Attorney's fees allowed	5,000.00	
		25,736.06
Net estate in Illinois		$923,135.41

Estate in Wisconsin.

Real estate of the clear market value of	$56,000.00
Personal property of clear market value	20,000.00
Net estate in Wisconsin	76,000.00
Grand total of Net Estate in Illinois and Wisconsin..	$999,135.41

And the Court makes the following

Conclusions of Law.

1. That the said decedent, George Bullen, by a trust agreement dated the 11th day of December, 1902, and afterwards by a further trust agreement dated May 22, 1907, conveyed his securities and personal property theretofore kept in a safety deposit box in the vault of the Northern Trust Company in trust to the Northern Trust Company in contemplation of death and by conveyances intended to take effect and which did take effect at his death, and that the
112 net value of the securities so transferred is subject to the inheritance tax imposed by the laws of the State of Wisconsin.

2. That said property so conveyed was at the time of the death of said George Bullen of the clear market value of $936,761.7–; that said decedent at the time of his death had on deposit in banks in Chicago, Illinois, the sum of $12,109.77 which was not conveyed to said Northern Trust Company by said conveyances; that said decedent at the time of his death owned real estate in Wisconsin which was of the clear market value of $56,000 and that he owned personal property on and about said premises of the clear market value of $20,000. Total,—$1024871.47; that there should be deducted from the amount of the property so conveyed in trust to the Northern Trust Company the following sums:

Charges of the Trust Company for prior services....	$10,000.00
Property taxes paid by the Northern Trust Co. which were due at the decedent's death.....	4,775.69
Debts of decedent	5,960.37
For attorney's fees	5,000.00
Total deductions	$25,736.06

3. That said Northern Trust company among other securities held a policy of $25,000 on the life of said George Bullen which when executed was payable to Mary Lenore Bullen, but which she afterwards at the request of said George Bullen assigned to the Northern Trust Company to be held among other securities, conveyed by the trust agreement dated December 11, 1902, and that neither said insurance policy nor the proceeds thereof is subject to an inheritance tax.

4. That the amount of the inheritance tax paid to the treasurer of Cook County, Illinois, should not be deducted from the value of the *of the* securities held by the Northern Trust Company before the inheritance tax imposed on said property by the laws of this state is determined.

5. That in computing the inheritance tax on the several interests in said estate which are taxable the exemptions given the several beneficiaries should be deducted from the first $25,000 in value of the shares they receive respectively.

6. That the inheritance tax should be computed on the personal property of the decedent wherever located but only upon the real estate in Wisconsin and upon the securities transferred to
113 the Northern Trust Company on the portions that each heir or beneficiary receive- under said trust agreement, but, as the said Northern Trust Company did not take possession of the real estate or personal property of the decedent located in the State of Wisconsin or attempt to administer it as a part of the trust, the tax on that portion of the estate or on the interests of the several heirs thereto should be estimated as though it passed by the intestate laws of the State of Wisconsin.

7. That the names, relationship to decedent of the several heirs and beneficiaries, the value of the estate each receives, exemptions, rate of taxation and tax which should be imposed are as follows:

Name.	Relationship.	Value of estate received.		Rate.	Tax.
Mary Lenore Bullen	Widow.	$228,794.76	$10,000	1% 1½ 2 2½	$4,744.87
George Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
Richard Nixon Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
Wm. Graham Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
John Nixon Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
Lucy E. Cleghorn	Niece.	11,228.90	500	1½%	160.93
Annie Graham	Sister.	6,126.25	500	1½%	84.39
		Total tax			$20,184.71

Let judgment be entered accordingly with costs.
Dated March 9th, 1910.
By the Court:

MARTIN L. LUECK.
Circuit Judge.

114 [Endorsed:] State of Wisconsin, Circuit Court, Waukesha County. In the matter of the estate of Geo. Bullen, deceased. Findings of fact and conclusions of law. Due and personal service of the within admitted this — day of —— 190--. F. L. Gilbert Atty. Genl. A. C. Titus Assistant Attorney for the State. Filed in Circuit Court Mar- 11, 1910, Waukesha County, Wis. E. M. Webb, Clerk. Filed Mar- 14 1910 Clarence Kellogg Clerk of Supreme Court, Wis.

115 STATE OF WISCONSIN,
Waukesha County:

In Circuit Court.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

At a Special Term of the Circuit Court for the County of Waukesha, Held at the Court House in the City of Juneau, in the County of Dodge, the State of Wisconsin, on the 9th Day of March, 1910.

Present, Hon. Martin L. Lueck, Judge.

This matter, which was an appeal from a judgment of the county court of Waukesha county, determining the inheritance tax in the matter of the estate of George Bullen, deceased, was heard by the court at a special term thereof, sitting in the courthouse at said City of Juneau, Dodge County, Wisconsin, on the twenty first day of February, nineteen hundred and ten.

There were present A. C. Titus, Assistant Attorney General, for the State, and Frame & Blackstone and Ritsher, Montgomery, Hart & Abbott for Mary Lenore Bullen, widow of said deceased and George Bullen, Junior, an adult child of said deceased, and C. W. Newberry as guardian ad litem for Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, minor children of said decedent, and T. W. Haight, Public Administrator, of Waukesha County, for Waukesha County and the state; said Lucy E. Cleghorn, a niece of said Bullen and beneficiary of said estate, and said Annie Graham, a sister of said Bullen and a beneficiary of said estate, having been served by publication, with a notice of this proceeding, but not appearing personally or by counsel, and the evidence having been submitted and the court having heard argument of counsel found and determined:

1. That George Bullen, deceased, died on the tenth day of September, 1908, at his home near Oconomowoc, in the County of Waukesha, Wisconsin, aged sixty two years, being at that time a legal resident and inhabitant of said county of Waukesha, Wisconsin, and that no proceedings have been instituted or had in this state to determine the amount of the inheritance tax upon his estate, except the proceeding herein instituted.

2. That at the time of his death, and for a long time prior thereto, said George Bullen was afflicted with a nervous disease termed "ataxia locomotor," which is an incurable disease and which is liable to result in paralysis and the death of the person af-
116 flicted with it at any time and that for several years prior to his death and at the time the several trust agreements herein described were made he was aware that he was afflicted with that disease.

3. That on December 11th, 1902, said George Bullen made, executed and delivered to the Northern Trust Company of Chicago, Illinois, a corporation organized and existing under the laws of the

State of Illinois, an instrument in writing, assigning to said company certain real and personal property and assets shown by the schedules on file in said case, marked "Schedules A" and "B," attached to Exhibit "A," but in trust for the purposes in such assignment expressed. In pursuance of said agreement he executed and subsequently delivered to the Northern Trust Company deeds of certain real estate, particularly described in Schedule "B," attached to Exhibit "A," but his wife did not join in the execution thereof; that in pursuance of said agreement he transferred by endorsement in blank the various certificates of stock and notes described in Schedule "A," of Exhibit "A," by endorsement on said certificates and executed assignments of several insurance policies in said schedule mentioned and delivered said certificates, insurance policies and assignments thereof, and the other securities mentioned in Schedule "A," to said Northern Trust Company; that the said securities, described in said exhibits, were, at least as far back as the year 1900, kept in a safe deposit box in Chicago. That negotiations for the arrangement above referred to were begun between him and the Northern Trust Company in 1900 or 1901. The endorsements of assignment of the various stock certificates were made December 11, 1902. The securities were at that time left with the Northern Trust Company and on April 4th., 1903, the transaction was completed by the acknowledgement and final delivery of the assignment in trust; that said trust agreement contained the following clause:

"Fifth: I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and, at all events, after my death, the said income and the said principal shall be applied, paid over or held as herein provided."

117 4. That on the eleventh day of December, 1902, the said Northern Trust Company receipted for the personal property and accepted the trust imposed by said agreement; that thereafter during his lifetime and until his death the said Northern Trust Company paid to said George Bullen and he received the income from the property conveyed by the above described instrument; that after the execution of said agreement and prior to January 1st, 1904, said George Bullen repossessed himself of the personal property transferred by said assignment in trust but permitted said assignment to remain in full force and effect for the purpose of transferring the real estate therein described to said Trust Company, and that afterwards, to wit: on the 22nd day of May, 1907, the said George Bullen executed a further assignment in trust to said Northern Trust Company, again transferring certain personal property and the real estate which had been omitted in the first transfer and

specified that the property thereby transferred and set over should be held by the said trustee upon the same trusts and conditions and with the same rights and powers as though the said property had been included in the original transfer to said Trust Company under said assignment in trust and he had not repossessed himself of the same. The said Northern Trust Company, on the 22nd day of May, 1907, receipted for the personal property described in Schedule "A," attached to said second assignment, and accepted the trusts imposed by said second assignment.

5. That said George Bullen left surviving him at his death a widow and four sons, who were his only heirs at law and next of kin; that the dates of birth and relationship to said George Bullen and the dates of birth and relationship of the several beneficiaries named in the said trust assignments and their residences are as follows:

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Beneficiary.	Residence.	Relationship.	Birthday.
Mary Lenore Bullen	Waukesha Co., Wis.,	Wife	45 years old Sept. 10, 1908.
George Bullen, Jr.	" " "	Son	Feb. 17, 1887.
Richard Nixon Bullen	" " "	"	Aug. 26, 1890.
William Graham Bullen	" " "	"	Dec. 23, 1895.
John Nixon Bullen	" " "	"	Dec. 27, 1897.
Annie Graham	London, Canada.	Sister	67 years old Sept. 10, 1908.
Lucy E. Cleghorn	British Columbia	Niece (Sister's daughter.)	45 years old Sept. 10, 1908.
Mary T. Harris	London, Canada.	Sister	Aug. 15, 1839.
Victoria Bullen	" "	"	Feb. 20, 1848.
Helen Mary Harris	" " "	Niece (Sister's daughter)	July 11, 1860.

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6. That George Bullen originally resided in Chicago, in the State of Illinois. About 1892 he removed his home to Oconomowoc but continued to transact some business in Chicago down to the time of his death; that at that time he occupied and had occupied for about fifteen years prior thereto (with his family) the farm known as "Minnewoc," in portions of Sections 2 and 11, in Township 7 North, Range 17 East, in Waukesha County; that he owned and had in his possession at the time of his death at said Minnewoc, in Waukesha County, certain books, pictures, household furniture and equipment, and certain carriages, wagons, implements, boats, horses and other livestock and other chattel property appurtenant to said farm which was of the clear market value of $20,000. Said real estate was at the time of his death of the clear market value of $56,000.00. That at the time of his death he had on deposit in a checking account with the Northern Trust Company a sum of $12,107.02 and a like account with the Corn Exchange National Bank of Chicago of $2.75. These accounts were not held under the terms of said trust assignment prior to his death but upon his death they were placed thereunder by the Northern Trust Company and were applied upon the payment of the debts, taxes and expenses of administration of his estate.

7. That on the fourth day of April, 1903, said George Bullen made a last will and testament of the same tenor as the said assignment in trust but the same has not been probated and no letters of ad-
119 ministration have ever been issued upon the estate of George Bullen, either in Wisconsin or elsewhere, except in this proceeding.

8. That at the death of George Bullen the Northern Trust Company held under the terms of the trust assignment, Exhibit "A," the properties and securities described in the revised schedule, Exhibit "B." The clear market value of the items contained in Exhibit "B" was and is the sum of $961,761.70 (including $25,000 life insurance. He also owned bank deposits in Chicago to the amount of $12,109.77.

9. That said Northern Trust Company, being a foreign corporation, and not having ever been licensed to transact business in this state, never took possession either of the real estate or personal property of the decedent situate in this state, Wisconsin, and has not attempted to exercise control thereof or administer the same as a part of the property of decedent assigned to it in trust by said agreements.

10. That at the time of said decedent's death the said Northern Trust Company held as a part of the Trust property so assigned to it fifty (50) shares of the capital stock of the Wisconsin Trust Company, a Wisconsin corporation, which it sold for $6,250.00.

11. That the securities assigned were at all times herein mentioned kept in the vault of the Northern Trust Company in Chicago, in the State of Illinois, either by said decedent, in a safety deposit box, or by the said Northern Trust Company as his agent or under said Trust Agreements. That negotiations leading up to the execution of said trust agreements were done and made either at the offices of the Northern Trust Company or at the office of decedent's attorneys

in the City of Chicago, Illinois, and said agreements were executed in Chicago, Illinois.

12. That the personal property described in Exhibit "B," attached to the stipulation, together with the Minnewoc farm above mentioned and the personal property thereon and appurtenant thereto and said bank deposits comprise all of the property of said decedent in which he had any right, title or interest at the time of his death, except certain real estate in Canada and Missouri, described in schedule "B" of Exhibit "C," annexed to the stipulation.

13. That the stock held by George Bullen in the Fremont
120 Land & Improvement Company was acquired when that company was organized. It was organized in 1899 by George Bullen and certain associates who owned real estate in Kansas City, Missouri, and it was organized solely for the purpose of handling such real estate and it possessed the powers usual to real estate corporations organized in Missouri. Its total capital stock was $500,000.

14. That the Policy No. 195,589 of the Northwestern Mutual Life Insurance Company for $25,000 on the life of the decedent was originally payable to Marry Lenore Bullen, his wife, but was by her assigned about the end of December, 1902, for the purpose of enabling him to turn it over to the Northern Trust Company among the securities covered by said trust assignment. The policy contained no provision authorizing a change of beneficiaries.

15. That the debts of George Bullen, at the time of his death, together with the expenses of his last illness, amounted to $5,960.37, which amount was paid out of the principal of the trust estate by the Northern Trust Company.

16. That at the time of the death of said George Bullen there was also property taxes amounting to $4,775.69 due thereon, which were at that time a lien upon the property held by the Northern Trust Company and this amount was paid by it out of the principal of the trust estate.

17. That immediately after the death of George Bullen the Northern Trust Company made a charge of $10,000 for its services in connection with the said estate, deducting said amount from the principal thereof, the same being for services up to the time of the death of said George Bullen.

18. That the attorneys for the trustee and for the beneficiaries are entitled to $5,000 for their services in the matter of attending the litigation arising upon the determination of inheritance taxes on said estate in Illinois and Wisconsin, which is considered a reasonable fee for such services.

19. That the Northern Trust Company paid further out of the principal of said estate to the County Treasurer of Cook County, Illinois, the sum of $8,569.51 as an inheritance tax on the prop-
121 erty of said decedent, described in Exhibit "B," imposed by the laws of the State of Illinois.

20. That at the time of said George Bullen's death the Northern Trust Company, among other things, held deeds of real estate situate in the State of Missouri, which were conveyed to it by said George Bullen and were held under said trust agreement; that the value of

said real estate was $42,000 at the time of decedent's death. And the court made the following

Conclusions of Law.

1. That the said decedent, George Bullen, by a trust agreement dated the 11th day of December, 1902, and afterwards by a further trust agreement dated May 22, 1907, conveyed his securities and personal property theretofore kept in a safety deposit box in the vault of the Northern Trust Company and herein designated in trust to the Northern Trust Company in contemplation of death and by conveyances intended to take effect and which did take effect at his death, and that the net value of the securities so transferred is subject to the inheritance tax imposed by the laws of the State of Wisconsin.

2. That said property so conveyed was at the time of the death of said George Bullen of the clear market value of $936,761.70; that said decedent at the time of his death had on deposit in banks in Chicago, Illinois, the sum of $12,109.77 which was not conveyed to said Northern Trust Company by said conveyances; that said decedent at the time of his death owned real estate in Wisconsin which was of the clear market value of $56,000 and that he owned personal property on and about said premises of the clear market value of $20,000. Total, $1,024,871.47; that there should be deducted from the amount of the property so conveyed in trust to the Northern Trust Company the following sums:

Charges of the Trust Company for prior services	$10,000.00
Property taxes paid by the Northern Trust Co. which were due at the decedent's death	4,775.69
Debts of decedent	5,960.37
For attorneys' fees	5,000.00
Total deductions	**$25,736.06**

3. That said Northern Trust Company among other securities held a policy of $25,000 on the life of said George Bullen which when executed was payable to Mary Lenore Bullen, but which she
122 afterwards at the request of said George Bullen assigned to the Northern Trust Company to be held among other securities conveyed by the trust agreement dated December 11, 1902, and that neither said insurance policy nor the proceeds thereof is subject to an inheritance tax.

4. That the amount of the inheritance tax paid to the treasurer of Cook County, Illinois, should not be deducted from the value of the securities held by the Northern Trust Company before the inheritance tax imposed on said property by the laws of this state is determined.

5. That in computing the inheritance tax on the several interests in said estate which are taxable the exemptions given the several beneficiaries should be deducted from the first $25,000 in value of the shares they receive respectively.

6. That the inheritance tax should be computed on the personal

property of the decedent wherever located *by* only upon the real estate in Wisconsin and upon the securities transferred to the Northern Trust Company on the portions that each heir or beneficiary receive under said trust agreement, but, as the said Northern Trust Company did not take possession of the real estate or personal property of the decedent located in the State of Wisconsin or attempt to administer it as a part of the trust, the tax on that portion of the estate or on the interests of the several heirs thereto should be estimated as though it passed by the intestate laws of the State of Wisconsin.

7. That the names, relationship to decedent of the several heirs and beneficiaries, the value of the estate each receives, exemptions, rate of taxation and tax which should be imposed are as follows:

123

Name.	Relationship.	Value of estate received.	Exemptions.	Rate.	Tax.
Mary Lenore Bullen	Widow.	$228,794.76	$10,000	1% 1½ 2 2½	$4,744.87
George Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
Richard Nixon Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
William Graham Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
John Nixon Bullen	Son.	187,745.37	2,000	1% 1½ 2 2½	3,798.63
Lucy E. Cleghorn	Niece.	11,228.90	500	1½%	160.93
Annie Graham	Sister.	6,126.25	500	1½%	84.39
			Total tax		$20,184.71

And the court having ordered judgment to be entered accordingly, now, therefore, upon the motion of A. C. Titus, Assistant Attorney General, and T. W. Haight, Public Administrator of Waukesha County, it is considered, ordered and adjudged that the State of Wisconsin do have and recover of and from the heirs and beneficaries of said estate as follows: of Mary Lenore Bullen, widow of said deceased, the sum of Four Thousand Seven Hundred Forty-four Dollars and Eighty-seven Cents ($4,744.87); of George Bullen, son of deceased, the sum of Three Thousand Seven Hundred Ninety eight Dollars and Sixty-three Cents ($3,798.63); of Richard Nixon Bullen, son of deceased, the sum of Three Thousand Seven Hundred Ninety-eight Dollars and Sixty-three Cents ($3,798.63); of William Graham Bullen, son of the deceased, the sum of Three Thousand Seven Hundred Ninety-eight Dollars and Sixty-three Cents ($3,-

798.63); of John Nixon Bullen, son of deceased, the sum of Three Thousand Seven Hundred Ninety-eight Dollars and Sixty-three Cents ($3,798.63); of Lucy E. Cleghorn, niece of said deceased, the
124 sum of One Hundred Sixty Dollars and Ninety-three Cents ($160.93); of Annie Graham, sister of said deceased, the sum of Eighty-four Dollars and Thirty-nine Cents ($84.39).

Dated this 9th day of March, 1910.

By the Court:

MARTIN L. LUECK,
Circuit Judge.

125–131 [Endorsed:] (Original.) Waukesha County Circuit Court. In the matter of the Estate of George Bullen, Deceased. Judgment. The personal service of the within admitted this — day of —— 190–. F. L. Gilbert, Attorney General, A. C. Titus, Ass't Attorney for the State. Filed in Circuit Court Mar. 11, 1910, Waukesha County, Wis. E. N. Webb, Clerk. Filed Mar. 11, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

* * * * * * *

132 STATE OF WISCONSIN,
County of Waukesha, ss:

In the County Court of Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

It is hereby stipulated between the State of Wisconsin, by its Attorney General and T. W. Haight, Public Administrator of Waukesha County and Special Administrator of said estate, Mary Lenore Bullen and George Bullen, Jr., by Frame & Blackstone and John R. Montgomery, their attorneys, and Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, by C. W. Newbury, their guardian ad litem, that for the purpose of determining the inheritance tax, if any, to be levied upon said estate in the State of Wisconsin, the statements of fact, hereinafter set forth, shall be regarded as proven, subject to the conditions hereinafter set forth.

Such stipulation is entered into on the part of the said Mary Lenore Bullen, George Bullen, Jr., Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, upon the express condition that by so stipulating, they shall not waive any right to object to the levy of any inheritance tax upon the property sought to be taxed, or upon any part thereof, and that they do not waive any objection which they may interpose under the constitution or laws of the United States, or of the State of Wisconsin.

Subject to the foregoing said parties stipulate that for the purpose of this, and any other further hearing in this proceeding, either in this or in any Superior Court, the following facts shall be taken to be true, and shall be regarded as proven in this proceeding:

George Bullen, a citizen of Wisconsin, residing near Oconomowoc, in Waukesha County, died September 10th, 1908, aged 62 years. He left a widow, Mary Lenore Bullen, and four sons, George Bullen, Jr., Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, his only heirs at law and next of kin.

The dates of birth and relationship to said George Bullen of the several beneficiaries named in the trust assignment, hereinafter mentioned and their separate residences, are respectively as follows:

Beneficiary.	Residence.	Relationship.	Birthday.
Mary Lenore Bullen	Waukesha Co., Wis.,	Wife	45 yrs. old Sept. 10, '08.
George Bullen, Jr.	" " "	Son	Feb. 17, 1887.
Richard Nixon Bullen	" " "	Son	Aug. 26, 1890.
William Graham Bullen	" " "	Son	Dec. 23, 1895.
John Nixon Bullen	" " "	Son	Dec. 27, 1897.
Annie Graham	London, Canada.	Sister	67 years old Sept. 10, '08.
Lucy E. Cleghorn	British Columbia	Niece (Sister's daughter)	45 years old Sept. 10, '08.
Mary T. Harris	London, Canada.	Sister	Aug. 15, 1839.
Victoria Bullen	London, Canada.	Sister	Feb. 20, 1848.
Helen Mary Harris	London, Canada.	Niece (Sister's daughter)	July 11, 1860.

Geirge Bullen iriginally resided in Chicago, Illinois. Abiut 1892 he removed his home to Oconomowoc, but continued to transact some business in Chicago down to the time of his death. At that time, he occupied and had occupied for about fifteen years prior thereto, with his family, the farm known as "Minnewoc," in portions of Section- 2 and 11, Township 7 North, Range 17, East in Waukesha County, particularly described in Schedule "B" of the agreement hereto attached and marked Exhibit "A."

He had in his possession, at the time of his death, certain books, pictures, household furniture and equipment, and certain carriages, wagons, implements, boats, horses and other live stock, and other chattel property appurtenant to said farm which for the purpose of the trial in this court only are agreed to be of the clear value of $20,000.00. Said real estate was at the date of his death of the clear value of $—.

That at the time the negotiations for the assignment hereinafter mentioned were begun between George Bullen and the Northern Trust Company he was and for sometime prior thereto had been, suffering with a nervous disease termed "ataxia locomotor" and at the time negotiations were being conducted and at the time the several assignments herein described were made he was aware of the disease with which he was afflicted.

On or about December 11th, 1902, he entered into an agreement with the Northern Trust Company, an Illinois corporation, having its principal office in the City of Chicago, a copy of which
134 agreement, denominated an "Assignment in Trust," is attached hereto and marked Exhibit A.

In pursuance of said agreement, he executed and subsequently delivered to The Northern Trust Company, a deed of the real estate above referred to, and particularly described in Schedule B attached to said Exhibit A, but his wife did not join therein. Her refusal so to do delayed the conclusion of the arrangement between said Bullen and said Trust Company.

In pursuance also of said agreement, he assigned by endorsements in blank the various certificates of stock and notes described in Schedule A of Exhibit A, by endorsements on said certificates, and executed assignments of the several insurance policies in said schedule mentioned, and delivered said certificates, insurance policies and assignments thereof, and the other securities mentioned n said Schedule A to the said Trust Company.

It cannot be shown that the said Bullen ever kept any of the securities described in the exhibits hereto attached, outside of the City of Chicago. At least as far back as the year 1900, and from that time down to December 11th, 1902, he kept all his securities in a safe deposit vault in Chicago.

Negotiations for the arrangement above referred to were begun between him and the Northern Trust Company in 1900 or 1901. Various drafts of the assignment in trust were made at various times during the interim, and were discussed between them. The endorsements of assignments on the various stock certificates were made on December 11th, 1902. The securities were, at that time, left with

the Northern Trust Company, and on April 4th, 1903, the transaction was completed by the acnowledgment and final delivery of the assignment in trust.

Thereafter certain of the securities mentioned in Exhibit B were returned to the said George Bullen by the Northern Trust Company to exchange or to hold, but were held by him through The Northern Trust Company acting as his agent. Most, if not all, of the sales or exchanges of securities were made for him by said Trust Company either as his agent acting under his direction, or by it as trustee under said trust assignment, and the physical location of the bonds, notes, stock certificates, insurance policies and other securities mentioned in Exhibits A and B continued to be in Chicago at all times from December 11th, 1902, down to the time of said Bullen's death, except as to such as were sold or disposed of by exchange for said Bullen by said Trust Company, either as his trustee, or as his agent.

135 On or about May 22nd, 1907, said Bullen executed and delivered to said Trust Company an instrument denominated "Further Assignment in Trust," a copy of which is hereto attached, and marked Exhibit C.

Immediately prior to the date of the said further assignment in trust, said Trust Company had temporarily held the personal property described in Schedule A of said Exhibit C as agent for the said Bullen. From the said 22nd. day of May, 1907, it held the securities mentioned in said further assignment in trust, and held deeds of the real estate mentioned in Schedule B thereto attached. Mrs. Bullen did not join in said deeds.

All of the arrangements between the said Bullen and the said Trust Company with reference to said assignment in trust and further assignment in trust were made in Chicago, at the office of the Trust Company, or of said Bullen's attorney in Chicago.

On the date of the death of George Bullen, said Trust Company recorded the deed to the real estate in Waukesha County, but upon being advised that it could not, without qualifying to do business in Wisconsin as a foreign corporation, hold and manage the said farm, and the personal property appurtenant thereto, in accordance with the terms of the said assignment in trust, it declined to undertake the management of the same.

At the time negotiations for the arrangement above mentioned were begun between George Bullen and The Northern Trust Company, his wife was suffering from some nervous trouble, and was in a precarious state of health. She continued to suffer from ill health down to the date of his death.

The transfer of the real estate, described in Exhibit B, was delayed until the execution of the further assignment in trust shown as Exhibit C hereto, by reason of the fact that Mrs. Bullen declined to sign the deeds with her husband refusing to relinquish her dower and other rights, unless Mr. Bullen should make some provision in said trust agreement for an income for her mother. She refused at first to assign the policy of the New York Life Insurance Company

on his life payable to her, but finally reached an agreement with him, and did so. The deeds she never signed.

When George Bullen died, he had on deposit in a checking account with The Northern Trust Company, $12,107.02 and in a like account in the Corn Exchange National Bank of Chicago,
136 $2.75. These amounts were not held under the terms of said trust assignment prior to George Bullen's death, but upon his death, they were placed thereunder by the Northern Trust Company, and were applied upon the payment of the debts, taxes and expenses of administration hereinafter mentioned.

On the 4th. day of April, 1903, George Bullen made a last will and testament of the same tenor as the said assignment in trust, but the same has not been probated, and no letters of administration have ever been issued on the estate of said George Bullen, either in Wisconsin or elsewhere.

At the time of the death of George Bullen, the Northern Trust Company held under the terms of the trust assignment, Exhibit A, the property and securities described in the revised schedule, a copy of which is hereto attached, and marked Exhibit B. The clear values of the respective items contained in Exhibit B, are as stated in the column thereof headed "Clear Value."

The property described in said Exhibit B, together with the Minnewoc farm, above mentioned, and the personal property thereon, and appurtenant thereto, and said bank deposits, comprise all of the property known to any of the parties to this stipulation in which the said George Bullen had any right, title or interest at the time of his death, except real estate in Canada and Missouri described in Schedule B of Exhibit C.

The stock held by George Bullen in the Fremont Land and Improvement Company was acquired when that company was organized. It was organized in 1899 by George Bullen, and certain associates, who owned real estate in Kansas City. It was organized solely for the purpose of handling such real estate. Its powers are expressed as follows in its charter:

"The purposes for which said corporation is formed are to buy, sell, convey, own and improve real estate, and to manage, rent, lease or mortgage the same; to erect houses and other buildings, to loan money on real estate, and for all other purposes properly incidental to the purposes hereinbefore set forth."

The total capital stock of the corporation is $500,000.

After Mr. Bullen's death, The Northern Trust Company sold for $62250.00 the 50 shares of stock of the Wisconsin Trust Co.

The Washington Park Club is a corporation in liquidation. Its sole assets at the time of George Bullen's death were certain lands situated in the City of Chicago, which it was then selling for
137 the purpose of distributing its capital among its stockholders.

Policy No. 195,559, of the Northwestern Mutual Life Insurance Company for $25,000, described in Exhibit B, was originally payable to Mary Lenore Bullen, wife of George Bullen, but was by her assigned about the end of December, 1902, for the purpose of enabling him to turn it over to The Northern Trust Company

among the securities covered by said trust assignment. The policies contained no provision authorizing a change of beneficiaries.

The debts of George Bullen, at the time of his death, together with the expenses of his last illness, amounted to $5960.37, which amount was paid out of the principal of the trust estate by The Northern Trust Company.

At the time of the death of George Bullen, there were also taxes of $4775.69, which were at that time a lien upon the property held by The Northern Trust Company, and this amount was paid by it out of the principal of the trust estate.

Immediately after the death of George Bullen, The Northern Trust Company made a charge of $10,000, for its services in connection with the said estate, deducting said amount from the principal thereof, the same being for services up to the time of the death of George Bullen. In addition to the charge of The Northern Trust Company, above mentioned, the attorneys for the trustee are entitled to the usual customary attorneys' fees for their services in attending to litigation arising over the determination of inheritance taxes on said estate, both in Illinois and Wisconsin.

The Northern Trust Company paid further out of the principal of the estate, a tax of $8569.51 to the County Treasurer of Cook County, Illinois, as an inheritance tax on the property described in Exhibit B.

From shortly after the death of George Bullen down to the month of May, 1909, George Bullen, Jr., and Mary Lenore Bullen on behalf of herself and her minor children, through their Chicago attorney, discussed from time to time with The Northern Trust Company, the question of an inheritance tax in the State of Wisconsin, but The Northern Trust Company, being uncertain as to whether or not it should go into the State of Wisconsin in order to take possession of the trust property there, did not decide until the month of May or June, 1909, whether or not it would do so. As soon as The Northern Trust Company decided that it would not undertake any business in the State of Wisconsin, and would not enter
138 any appearance in any of the Courts of the State of Wisconsin, the said George Bullen, Jr., and Mary Lenore Bullen for herself and her minor children made request through their Waukesha attorneys to the District Attorney of Waukesha County to institute a proceeding for the determination of said tax, and this proceeding was begun pursuant to such request.

It is further stipulated that the said Mary Lenore Bullen, George Bullen, Jr., Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, and C. W. Newbury, as guardian ad litem, object to the consideration by the court of any of the facts herein recited relating to property other than the real estate and chattels located within the State of Wisconsin. They offer such objection on the ground that to impose any inheritance tax thereon would be to take their private property for public use without just compensation, and would deprive them of their property without due process of law, and would deny to them the equal protection of the laws, and would also impair the obligation of the contract between George

Bullen and The Northern Trust Company in violation of the Constitution of the United States, and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin.

Dated Dec. 1st, 1909.

A. C. TITUS,
Assistant Atty. Gen. of Wisconsin.
THERON W. HAIGHT,
Public Administrator of Waukesha Co., Wis.
JNO. R. MONTGOMERY.
FRAME & BLACKSTONE.
C. W. NEWBURY,
Guardian ad Litem.

139 Exhibit "A."

140 EXHIBIT A.

Assignment in Trust.

Know all men by these presents, that I, George Bullen, of the County of Waukesha, in the State of Wisconsin, in consideration of the sum of One Dollar to me in hand paid, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, have assigned, transferred and set over, and by these presents do assign, transfer and set over unto The Northern Trust Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, its successors or assigns, all those certain life insurance policies, bonds, notes, shares of stock and other personal property particularly described in Schedule "A" hereto attached; in trust, nevertheless, for the uses and purposes and subject to the conditions hereinafter mentioned, that is to say:

First. The said trust property and the proceeds thereof, or the property in which it may be reinvested from time to time, and so much of the income therefrom as shall not be paid over to the beneficiaries of the said trust, together with the real estate conveyed by certain deeds of even date herewith and particularly described in Schedule "B" hereto attached, and the proceeds thereof, and all reinvestments and all income not paid to said beneficiaries, and such other property, either real or personal, as may hereafter be added thereto by conveyance or transfer, or otherwise, shall be held as a trust estate by the said Trustee, The Northern Trust Company, its successors or assigns, for the use and benefit of my wife Mary Lenore Bullen, my children, George Bullen, Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen and myself, and such other beneficiaries as I may designate in this instrument or may name at any time hereafter.

Second. Out of the income from the said trust estate shall be first paid the expenses of the said trust, including all life and fire insurance premiums, taxes and assessments, and other expenses re-

lating to said trust property, and the reasonable charges and expenses of the said Trustee.

Third. Out of the income from the said trust estate the said Trustee shall pay nine hundred dollars ($900.) per annum, in semi-annual payments to my niece, Lucy E. Cleghorn, of Concord, Massachusetts, during the *the* term of her natural life; and
141 the further sum of Nine Hundred Dollars ($900.) per annum, in like semi-annual payments, to my sister Annie Graham, of Concord, Massachusetts, during the term of her natural life.

Fourth. Out of the income of the said trust estate the said Trustee shall pay the cost of insurance and repairs and all taxes and assessments which may be levied against the house and lot belonging to me and known as number 470 Colbourne Street, in London, Ontario, Canada, during the lives of my sisters, Mary T. Harris and Victoria Bullen, and my niece, Helen Mary Harris, or the survivor of them, and shall hold the said house and lot as a home for the use and benefit of them, or the survivor of them, as long as any one of them may see fit to occupy it. And in the event that my said wife should claim and be entitled to dower therein, then the portion of the rents and profits from the said house to which she may be entitled by law, if any there be, shall be paid her by the said Trustee for the benefit of the one or more of my devisees who may be for the time being entitled to the said house under the provisions of this paragraph.

Fifth. I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and at all events, after my death, the said income and the said principal shall be applied, paid over or held as herein provided.

Sixth. The said Trustee shall hold my house and farm in Waukesha County, Wisconsin, known as "Minnewoc," as a home for my wife, Mary Lenore Bullen, and our children, so long as they or any of them shall desire to occupy it and until the final disposition of the trust hereby created, unless in the opinion of my said Trustee it shall be best sooner to lease or dispose of the said "Minnewoc," in which case it shall have authority so to do. And with the said "Minnewoc" the said Trustee shall hold all my books, pictures, household furniture and equipment, and all carriages, wagons, implements, boats, horses, live stock and all other chattel prop-
142 erty appurtenant to the said "Minnewoc," unless it shall deem it best to make other disposition of some or all of said chattels. Out of the income from the said trust estate the said Trustee shall maintain and care for the said "Minnewoc" and said appurtenances, using such part of the said income as may be neces-

sary, exclusive of the portions disposed of in the second, third and fourth paragraphs hereof, and it may replace from time to time such portions of said chattel property as it may deem necessary. But the said Trustee shall determine whether it is best for my said wife or children or one or more of them to live at "Minnewoc," and its determination shall be final and conclusive. It shall also determine whether any and all disbursements for the expenses of maintaining the said "Minnewoc" and its appurtenances, shall be entrusted to my said wife or to * * * one or more of my said children, or to some other person, or whether it shall itself make such disbursements. And in this behalf it should consider that my said wife has been for several years past in ill health, and it is my desire that she should be relieved of all responsibility, financial or otherwise, unless in the judgment of my said Trustee she shall be capable of assuming it.

Seventh. One third of the remainder of the income of the said trust estate, after deducting the expenses of this trust, and the portions of said income required for the purposes specified in the third, fourth and sixth paragraphs hereof, shall be held by the said Trustee during the lifetime of my said wife, and either invested and reinvested for her benefit or paid over to her in part or in whole, in the discretion of the said Trustee. And in this behalf it shall consider her welfare, and if in its discretion it shall deem best for her to receive the entire income set apart as aforesaid for her benefit, then the same shall be paid to her. The provisions of this instrument, together with the provisions for her and for our children in my will, shall be in lieu of all rights to a widow's or child's award, and in lieu of all homestead and dower rights. In the event, however, that she should claim her homestead or widow's award or should renounce the provision for her in my last will and testament and elect to take instead such portion of my estate as the law may allow her, or any part thereof, then nothing further shall be paid
143 her from the said trust estate, and all rights which she may have in the trust hereby created and the property hereby assigned or transferred or conveyed herewith, or hereafter added to the trust estate hereby created, shall thereupon immediately cease and be absolutely determined. In that event also she shall not be entitled to the benefit of any of the fund designated in the sixth paragraph hereof for the maintenance of "Minnewoc," but shall have only such rights in our said home as the law shall allow her. I hereby declare for the guidance of the said Trustee and of my said wife in the interpretation of this instrument, that the main purpose of the provisions herein relating to her is to provide for her support in the event of my disability or death, and at the same time to save her as far as possible in like manner as I might myself do, if in vigorous health, from all care or responsibility in financial or other matters.

Eighth. The remainder of the income from the said trust estate shall be paid to me or for my benefit during my lifetime and after my death shall be set apart for my four sons above named, share and share alike. The share of each one or so much as in the jud-

ment of the said Trustee he may need, shall be used for his benefit, in the Trustee's discretion, during his minority, but after he reaches the age of twenty-one years the entire income shall be paid to him. Any of the income in this paragraph mentioned which shall be collected or shall accrue during my lifetime and shall not be paid to me or for my benefit, shall be added to said trust estate.

Ninth. Subject to my rights during my lifetime, the said Trustee shall hold for my said four sons equally the entire principal of the said trust estate, except such portions thereof as are held by it for life beneficiaries or for the maintenance of "Minnewoc"; and it shall hold for my said four sons in like manner the portions aforesaid also as the same shall severally be releasel from time to time by the death of the beneficiaries thereof or otherwise. The said Trustee shall pay to each of my said sons when he shall reach the age of twenty-five years one-third of the share of the principal of the said trust estate then held for him; and it shall pay to him when he shall reach the age of thirty years the remainder of the share of the principal of the said trust estate then held for him. If it shall then hold other portions for life beneficiaries or for the main-
144 tenance of "Minnewoc", it shall pay over to him thereafter from time to time his share of the said portions as they shall severally be released by the death of the beneficiaries or otherwise.

Tenth. Should any one or more of my said sons die before my death, or should one or more of them die after my death and under the age of thirty years, or should any other beneficiary who may be entitled hereunder to have paid to him or held for him a share of the principal of the said trust estate, die before the time when the same is required by the provisions of this instrument to be paid over to him, the share to which he may be thus entitled at the time of his death (less his funeral expenses and the cost of a suitable monument, which the Trustee is authorized to pay, in its discretion), and any further portion of the trust estate to which thereafter he would become entitled if living, shall be held for or distributed to his heirs at law. His heirship and the portion to which each heir (except his widow) is entitled shall be determined under the laws of descent of the State of Illinois, and for this purpose the trust estate shall be regarded as personal property. His widow shall be entitled to the share allowed her under the said law of descent up to, but not in any event exceeding one-half the portion to which her deceased husband may be or become entitled, provided she be living and still a widow when her husband would become entitled thereto. Any excess over one-half her husband's portion and any part of her husband's portion which she may forfeit by re-marriage or otherwise, shall be held for or distributed to his other heirs. No portion of principal or income, however, shall be paid to any beneficiary under this or the following paragraph prior to my death unless by my direction. Should my wife become entitled under this provision to any portion of the said trust estate, such portion shall not be paid to her, but the income therefrom shall be added to the portion set apart in the seventh paragraph hereof, or the principal may be set apart for her benefit during her lifetime, as provided in the Twelfth paragraph

hereof, and after her interest in such portion shall have ceased by her death or otherwise, it shall be divided in like manner as the portion of the said trust estate held to produce an income for her under the Seventh paragraph hereof. Should any one of my
145 said four sons become entitled under this provision, by inheritance from one or more of his brothers or from any of their heirs, to any portion of the said trust estate, it shall be held for him until he shall reach the age of twenty-five years, or if he shall then have reached the age of twenty-five years it shall be held until he shall reach the age of thirty years, and the income therefrom, or so much thereof as in the judgment of the said Trustee he may need, shall be used for his benefit, in the Trustee's discretion, during his minority, but after he reaches the age of twenty-one years the entire income shall be paid to him. When he reaches the age of thirty years, or if he shall have reached the age of thirty years when he becomes entitled to the said portion so inherited, the principal thereof shall be paid to him. Should any of my said sons leave a widow or children who may become entitled under this provision to any portion of the said trust estate, the portion to which any such widow shall be entitled, shall be paid to her, and the portion to which any such child shall be entitled shall be held by the said Trustee until such child reaches the age of twenty-one years, and shall then be paid to him, the income meanwhile, or so much as the said Trustee shall deem needful, shall be used as said Trustee may direct for his support and education, or paid over to his guardian, in the said Trustee's discretion, and any of said income which the Trustee may retain it shall hold and invest and reinvest for him and it shall pay the same over to his guardian at any time it may deem it best for the welfare of such child so to do, or it may pay the same to the child himself when it pays him the principal as aforesaid.

Eleventh. If by any possibility it should happen that any of my said sons prior to reaching the age of thirty years shall have contracted habits of intemperance or dissoluteness or improvidence, and if for this or any other reason it is, in the opinion of the said Trustee, probable that, on receipt of the principal sum hereinbefore directed to be paid him at that age, he would speedily waste and dissipate the same, then and in that event the said Trustee, instead of paying him the said principal sum [illegible] any other portions of principal to which he may thereafter become entitled, shall retain the same during his lifetime or until such time as it shall be fully satisfied that he is capable of caring for it providently and with ordinary prudence. If the said Trustee shall deem it better for him
146 that only one-half of such principal should be retained and that the other half should be paid over to him, it shall pay him such half and a half of his share of each of the portions of the said trust estate subsequently released by the death of any of the other beneficiaries, or otherwise, but it shall first require an agreement from him that he will not object to or contest the retention by it of the remaining half. And he shall be entitled to the net income on the principal so held for him. At his death the whole amount

held for him shall be distributed as though he had died under the age of thirty years.

Twelfth. The said Trustee, if it shall deem it more convenient so to do, may set apart for the several beneficiaries and trusts hereunder, or any of them, or for any of the trusts which may arise hereunder, such part of the general trust estate as in its judgment is likely to produce an amount of net income equal to the share of the entire net income of said trust estate directed to be used for or paid to each of the said several beneficiaries, and as long as any such portion of the principal of the said estate shall remain so set apart the net income therefrom shall be used in lieu of the share of the net income from the entire trust estate directed herein to be used for such beneficiary, the purpose of this paragraph being to give the said Trustee power either to invest my said estate as a whole and divide the net income therefrom for the use of the several beneficiaries herein named, or to divide up the principal of said trust estate into separate funds for the said several beneficiaries, or one or more of them, and to use the net income from each of the said portions for the beneficiary or beneficiaries for whom it has been set apart. And if in making division or distribution of the said estate among the several persons entitled thereto it seems better to the Trustee to convey and set over to the said beneficiaries, or either of them any portion of the said estate in kind, then the Trustee shall have power so to do, and it shall have power and authority to make all the deeds or other paper writings which may be necessary to convey and vest the title thereto. But if the said Trustee shall deem it better in making division or distribution to sell and convert into cash the whole or any portion of the said estate, it shall have power and authority so to do.

Thirteenth. The said Trustee shall have full power to manage, lease, control, care for and protect and to make sale or sales
147 of all or any portion of the said trust estate, either real or personal, both that which is transferred to it by this instrument and the deeds of even date herewith described in said "Schedule B", and such as may hereafter be added thereto in any manner, including all reinvestments and accumulations thereof from time to time; such sales to be made either at public auction or privately, and upon such terms, whether for cash or upon credit or partly for cash and partly upon credit, as to it shall seem best. And the said Trustee shall have power to execute and deliver to the purchaser or purchasers, at any such sale or sales, good and sufficient deeds of conveyance for the property so sold, and the receipt of the said Trustee shall in every case exonerate the party taking the same from the payment of all moneys therein expressed to be received, or from seeing to the application thereof. The said Trustee shall have power at all times to invest and re-invest the said trust estate and any proceeds thereof, and all moneys at any time on hand in such securities or property as it may deem most desirable and wherever situate. It shall also have power to retain investments already made unless it shall see fit to change the same. The said Trustee shall have full power and authority to pay all taxes and

assessments upon the said trust estate of every nature or kind, which in its judgment, ought to be paid, and all premiums upon fire and life insurance policies, and all other costs and expenses relating to the said trust property which it shall deem necessary, and in the event that at the time of my death I should not leave sufficient property to satisfy my debts, the said Trustee shall pay any deficiency which in its judgment shall be necessary, out of that part of the income of the said trust estate which is directed to be held or paid to my said four sons, or, if need be, out of that part of the principal held for them.

Fourteenth. In all matters wherein discretion is vested by this instrument in the said Trustee its judgment shall be final and conclusive, the grant of such discretion to it being made with the intention of giving it full power and authority to manage said trust estate for the benefit of the several beneficiaries thereof, particularly my said wife during her lifetime, in the event that I should be unable at any time prior to my death to give my affairs such attention as they may demand, and at all events after my death, in
148 like manner as I myself might or could manage it if living, and in good health. In any matter herein left to the said Trustee's discretion, no greater authority from or vote of its board of directors shall be required to determine its opinion or to effect a decision than is required to determine other matters in the regular conduct of its business.

Fifteenth. No portion of the principal or of the income of the said trust estate shall in any case be alienable by any beneficiary in anticipation of payment or be subject to be taken for any beneficiary's debts.

Sixteenth. Any portion of the principal of the said trust estate which may not be disposed of herein, shall at the time of final distribution of the said trust estate be distributed among my heirs at law as provided by the laws of Illinois with relation to intestate property, and the laws of the said State shall govern in the interpretation of this instrument.

Seventeenth. The said Trustee shall have power to employ such agents, attorneys and servants as it may deem necessary, and their compensation, together with such other expenditures as it may deem necessary to carry out the purposes and directions herein expressed, shall be regarded as part of the reasonable charges and expenses of the said Trustee, and shall be paid out of the income from the said trust estate.

Eighteenth. The said Trustee shall render semi-annual or on request, quarterly, statements of account to those of the beneficiaries hereunder for whom the principal of said trust estate is held, or to their guardian during their minority, and the statements for each beneficiary shall cover such portion of the trust estate as he may be interested in. And in case any dispute should arise concerning the rights of any beneficiary under this instrument, the said Trustee shall have full power and authority to allow or to compromise and settle or to litigate the same, as it shall deem proper.

Nineteenth. In case the said Trustee shall make payment or dis-

tribution hereunder, of either income or principal, to any minor who may not have a guardian legally appointed, the said
149 Trustee shall pay the sum or sums so distributed, if it shall deem best so to do, to either of the parents or to the natural or acting guardian of such minor, and the receipt of such parent or natural or acting guardian shall constitute a full acquittance of the said Trustee, but the said Trustee may, if it shall deem best, require the appointment of a legal guardian for any such minor. The word "Guardian," wherever used in this instrument, shall be taken to be the legally appointed guardian, if there is one, or the Trustee shall require one, and, if not, then one of the parents or the natural or acting guardian as the Trustee may in its discretion determine.

Twentieth. The said Trustee shall pay all costs, expenses and charges of every kind whatsoever, including all expenses for betterments or improvements upon any of the trust property, out of the income from the said trust estate, in so far as this can be done without reducing the shares of the several beneficiaries to such an extent as seriously to inconvenience any of them, but if at any time there should be unusual demands upon the said income for such costs, expenses or charges, and in the judgment of the said Trustee the said beneficiaries or any of them may be seriously inconvenienced by the reduction of their distributive shares of the said income, it may pay such costs, expenses and charges out of the principal of the said trust estate. Any unusual increase in the income of the said trust estate, such as stock dividends or other like additions, received at times when the general income from the estate remains substantially constant, shall be added to the principal of the said trust estate, unless in the judgment of the said Trustee it or a part of it should be added to the income in furtherance of the general purposes in this instrument expressed. But the judgment of the said Trustee as to what shall be regarded as income and what shall be regarded as principal or capital, and the manner in which the same shall be applied or distributed, shall in all cases be final and conclusive.

Twenty-first. The said Trustee shall have full power and authority to borrow money for the use of the said estate and to mortgage or pledge any property belonging to the said estate, and in case it shall itself advance moneys to the said estate, it shall be en-
150 titled to reasonable interest thereon.

Twenty-second. All the power, authority and discretion herein given to the said Trustee, the Northern Trust Company, are hereby given to any successor in trust who may be appointed at any time, and to the Trustee for the time being hereunder, in like manner as though such Trustee had been particularly named herein.

In witness whereof, I have hereunto set my hand and seal at Chicago, this eleventh day of December, A. D. 1902.

[SEAL.] GEORGE BULLEN.

STATE OF ILLINOIS,
County of Cook, ss:

I, John R. Montgomery, a Notary Public, in and for the said County in the State aforesaid, do hereby certify that George Bullen, who is personally known to me to be the same person who subscribed the above and foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the same as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this Fourth day of April, A. D. 1903.

JOHN R. MONTGOMERY,
Notary Public.

The undersigned hereby acknowledges receipt of the personal property particularly described in Schedule "A" hereto attached, and accepts the same upon the trusts particularly specified in the above and foregoing instrument.

In witness whereof it has caused these presents to be executed by its secretary thereunto duly authorized, and its corporate seal to be hereto attached, this eleventh day of December A. D. 1902.

THE NORTHERN TRUST COMPANY,
By ARTHUR HEURTLEY, *Its Secretary.*

151 SCHEDULE "A."

Personal Property.

200 First Mortgage 6% Gold Bonds of Chicago Consolidated Brewing & Malting Co., dated July 14, 1890, principal due July 14, 1910, each for $1,000 having coupons maturing July 14, 1903, and thereafter attached;

104 First Mortgage 6% Gold Bonds of the Fred Heim Brewing Company, dated July 1, 1891, principal due July 1, 1911, each for $1,000, having coupons maturing July 1st 1903, and thereafter attached;

50 Collateral Trust Certificates of interest in 6% loan of the Illinois & Georgia Improvement Company for $750,000, each for $1,000, dated April 1st, 1901, principal due on or before April 1st, 1904, having coupons maturing April 1st, 1903, and thereafter attached;

14 First Mortgage 6% 5-20 Bonds of the Northwestern Brewing Company, dated December 5th, 1890, principal due December 1st, 1910, each for $500, having coupons maturing June 1st, 1903, and thereafter attached;

2 First Mortgage 5% Bonds of the Germania Maennner Chor, dated May 1st, 1889, principal due May 1st, 1909, each for $500, having coupons maturing May 1st, 1903, and thereafter attached;

5 Real Estate Mortgage Coupon Bonds executed by Wm. M.

Wright and Emily K. Wright, dated Kansas City, Missouri, August 28th, 1899, payable 5 years after date to the order of Joseph J. Heim and by him endorsed, each for the sum of $2,500, numbered 1 to 5, both inclusive, having coupons maturing August 28th, 1903, and thereafter attached;

Also five trust deeds to Ben T. Hardin, Trustee, securing said mortgage coupon bonds, all of said deeds being recorded on the 6th day of September, A. D. 1899, in the office of the Recorder of Deeds of Jackson County, Missouri;

Also a guaranty of one of said notes, executed by Joseph J. Heim, dated December 12th, 1899.

Guaranty of the other four notes executed by Joseph J. Heim, dated September 15, 1899.

100 shares of the American Exchange National Bank of Chicago, par value $100 per share, represented by Certificate No. 606, in the name of George Bullen, and by him endorsed in blank. Said Certificate bears the endorsement of one dividend of 75% and two dividends of 10% each, in liquidation.

100 shares of the capital stock of The Northern Trust Company, par value $100 per share, represented by Certificate No. 114, in the name of George Bullen, and by him endorsed in blank;

110 shares of the capital stock of the Corn Exchange National Bank of Chicago, par value $100 per share, represented by certificate No. 25, for 100 shares, and No. 365, for 10 shares, each in the name of George Bullen, and by him endorsed in blank;

152 240 shares of the capital stock of the Illinois & Georgia Improvement Company, par value $100 per share, represented by Certificates No. 291 for 140 shares; No. 302 for 60 shares; No. 400 for 40 shares, all in the name of George Bullen, and by him endorsed in blank;

Receipt by John R. Walsh, Treasurer of the Washington Park Club, dated April 4th, 1884, for 20 shares of the capital stock of the Washington Park Club, par value $100 each, represented by stock certificate No. 120;

Also assignment of said stock executed by George Bullen;

191½ shares of the capital stock of the Fremont Land & Improvement Company, par value $1,000 per share, represented by Certificate No. 4, in the name of George Bullen, and by him endorsed in blank;

1230 shares of the capital stock of the United Breweries Company, par value $100 per share, represented by Certificate No. 300, in the name of George Bullen, and by him endorsed in blank;

Note of Albert F. Bullen, for $25,000, dated November 20th, 1894, payable on demand to the order of George Bullen, and by him endorsed in blank. Interest at the rate of 5%. Said note bears endorsements showing interest paid to November 1st, 1898.

Note of Albert F. Bullen, for $16,775.20, dated July 1st, 1898, payable on demand to the order of George Bullen, with interest at the rate of 5% per annum. No endorsement of principal or interest appears on said note;

Policy No. 217,177, issued by the New York Life Insurance Com-

pany on the life of Albert F. Bullen, for $10,000; also assignment of said policy to George Bullen, dated November 20th, 1894;

Policy No. 80,088-*a*/*z*, issued by the Canada Life Assurance Company on the life of Albert Fitzherbert Bullen, for $3,888, payable to Maria L. Bullen and George Bullen; said Maria L. Bullen having assigned her interest in said policy to George Bullen, which assignment appears on the policy;

Policy No. 1,099,134 issued by the Mutual Life Insurance Company of New York on the life of Albert F. Bullen, for $5,047; also assignment of said policy by Maria Louise Bullen to George Bullen, dated November 25th, 1894; and assignment of said policy of Albert F. Bullen to George Bullen, dated November 1st, 1898;

Memorandum between Albert F. Bullen and Maria L. Bullen, his wife, and George Bullen, concerning sundry insurance policies.

Package of sundry receipts and memoranda relating to above mentioned insurance policies;

100 First Mortgage 5% Gold Bonds of East Side Electric Railway Company of Kansas City, Mo., Nos. 1 to 100 inclusive. Principal due July 1st, 1911, with option to pay on any interest day. Interest payable half yearly January 1st and July 1st. Coupon from July 1st, 1903, to date of maturity attached;

100 6% Gold Bonds of Ferd Heim Brewing Company, principal due July 1, 1911, with option to pay July 1st, 1906. Interest payable half yearly, January 1st and July 1st. Coupons July 1st, 1903, to maturity attached. Bonds numbered 191 to 200 inclusive, and 261 to 350 inclusive.

153 All the books, pictures, household furniture and equipment, and all carriages, wagons, implements, boats, horses and other live stock belonging to George Bullen, and all his other chattel property appurtenant to the house and farm known as "Minnewoc," in Waukesha County, Wisconsin.

Policy No. 311,157 of the Mutual Life Insurance Company of New York, for $50,000 on the life of George Bullen, payable to the said George Bullen, his executors, administrators or assigns, and all dividend, benefit and advantage to be derived therefrom.

Policy No. 195,589 of the Northwestern Mutual Life Insurance Company for $25,000 on the life of George Bullen, payable to his executors, administrators or assigns, and all dividend, benefit and advantage to be derived therefrom.

Policy No. 270,928 of New York Life Insurance Company, for $25,000 on the life of George Bullen, payable to his executors, administrators or assigns, and all dividend, benefit and advantage to be derived therefrom.

154 Schedule "B."

Real Property.

The following described lots, tracts or parcels of land lying, being and situate in the County of Jackson, State of Missouri, to-wit:

All of Lot numbered One Hundred and Seventy-Four (174) in

Block numbered Seventeen (17) in Old Town, now a part of Kansas City, Missouri, said Lot being situated at the southeast corner of Delaware Street and Fourth Street in said Kansas City and having a frontage of Sixty (60) feet on said Delaware Street and One Hundred and Forty-Two (142) feet on said Fourth Street;

Also,

All that part of Lots One Hundred and Seventy-One (171) and One Hundred and Seventy-Two (172), in Block Seventeen (17), Old Town (afterwards City of Kansas) now Kansas City, described as follows: Beginning on the east line of Delaware Street, Twenty-Six (26) feet south of the northwest corner of said Lot One Hundred and Seventy-Two (172); thence eastwardly and parallel with Fifth Street One Hundred and Forty-Two (142) feet to the west line of the alley intersecting said Block Seventeen (17); thence southwardly along the west line of said alley Forty-Seven (47) feet and six inches to a point; thence westwardly and parallel with Fifth Street One Hundred and Forty-Two (142) feet to the east line of Delaware Street; thence northwardly along Delaware Street Forty-Seven (47) feet and six (6) inches to the point of beginning, being Thirty-Four (34) feet off the south side of Lot One Hundred and Seventy-Two (172) and thirteen (13) feet six (6) inches off the north side of said Lot One Hundred and Seventy-One (171) in said Block Seventeen (17) of Old Town in said City of Kansas, now Kansas City, County and State aforesaid.

Also,

All and Singular that certain parcel or tract of land and premises situate, lying and being in the City of London, in the County of Middlesex and Province of Ontario, containing by admeasurement one-eighth of an acre, more or less, being composed of the South part of Lot Number Eleven on the South side of Duke Street, (now Dufferin Avenue) in the said City of London, and commencing on the East side of Colborne Street, at the South-west corner of said Lot; then Northerly along the East side of Colborne Street Fifty-two feet; then easterly in a line parallel with Duke Street One Hundred and Thirty feet, more or less, to Lot Number Twelve; then Southerly, along the division line of Lots Numbers Eleven and Twelve, Fifty-Two feet, to the South-east corner of said Lot Number Eleven; then Westerly, in a line parallel with Duke Street, One Hundred and Thirty feet, more or less, to the place of beginning.

Also that part of Lot Number Twelve on the South side of Duke Street, (now Dufferin Avenue) which may be described as follows, that is to say: Commencing at the South-west angle of the said Lot Twelve, in the limit between Lots Numbers Eleven and Twelve; then Easterly along the Southern limit of said Lot Number Twelve to within Sixty feet of the Eastern limit thereof; thence Northerly parallel with the Easterly limit, Fifty-Two feet, and six inches; then Westerly parallel to the Southern limit, to the limit between Lots Numbers Eleven and Twelve; then Southerly, along the last mentioned limit, Fifty-Two feet, and six inches, to the place of beginning.

Also, the following described real estate, situated in the County of Waukesha, in the State of Wisconsin, constituting the farm known as "Minnewoc."

All that part of fractional Lot Four (4) of Section Two (2) and of the North East Quarter of Section Eleven (11) in Township Seven (7) North of Range Seventeen (17) East, bounded as follows: Commencing in the South line of said quarter section at a point eighteen (18) rods East of the South West corner of said quarter section, running thence East on the South line said quarter section to the middle of the same, thence North along the middle line of said quarter section and across said fractional Lot Four (4) to Oconomowoc Lake; thence North Westwardly along the shore of said Lake to the line of a strip of land sold by Henry, Mary J. and Julia A. Lapham to Levi C. Merrick; thence along said Merrick's line to the West line of said fractional Lot Four (4); thence
155 South along said West line of Lot Four (4) and the West line of said quarter section to a point eighty (80) rods North of the South West corner of said quarter section; thence East eighteen (18) rods; thence South eighty (80) rods to the place of beginning, containing ninety-five (95) acres of land more or less.

156 EXHIBIT "B."

157 EXHIBIT B.

Securities Held by the Northern Trust Company under the Terms of the Trust Agreement at the Time of the Death of George Bullen, Deceased, with the Agreed Values Thereof.

Item.	Security.	Clear value.
1.	191½ shares of the capital stock of the Fremont Land and Improvement Company, a Missouri corporation, of the par value of $1,000. per share	143,625.
2.	615 shares of the capital stock of the United Breweries Company, a New Jersey corporation, of the par value of $100. per share	None.
3.	110 shares of the capital stock of the Corn Exchange National Bank of Chicago, organized under the national banking law, of the par value of $100. per share	43,450.
4	150 shares of the capital stock of the Northern Trust Company, an Illinois corporation, of the par value of $100. per share	48,750.
5.	Receipt of the Treasurer of the Washington Park Club for 20 shares of the capital stock of the Washington Park Club, an Illinois corporation, of the par value of $100. per share, (in liquidation)	3,500.

Item.		Security.	Clear value.
6.	50	shares of the capital stock of the Wisconsin Trust Company of Milwaukee, a Wisconsin corporation, of the par value of $100, per share	6,250.
7.	100	twenty year 5% debenture gold bonds of the United States Realty and Improvement Company, a New Jersey corporation, of the par value of $1,000, each, payable in New York	79,000.
8.	204	refunding 5% gold bonds of the Chicago Consolidated Brewing and Malting Company, an Illinois corporation, of the par value of $1,000, each, payable in Chicago	153,000.
9.	100	first mortgage 5% bonds of the East Side Electric Railway Company, of Kansas City, Missouri, a Missouri corporation, of the par value of $1,000, each, payable in New York	99,958.33
10.	14	first mortgage 6% bonds of the Northwestern Brewing Company, an Illinois corporation, of the par value of $500, each, payable in Chicago	4,200.
11.	2	first mortgage 5% bonds of the Germania Mænnerchor, an Illinois corporation, of the par value of $500, each, payable in Chicago	750.
12.	75	first mortgage railroad and land grant 4% bonds of the Union Pacific Railroad Company, a Utah corporation, of the par value of $1,000, each, payable in New York	77,062.50
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13.	35	first general mortgage 4% bonds of the Wisconsin Central Railway Company, a Wisconsin corporation, of the par value of $1,000, each, payable in New York	30,625.
14.	25	Illinois Division 4% mortgage bonds of the Chicago, Burlington & Quincy Railroad Company, an Illinois corporation, of the par value of $1,000, each, payable in New York	25,562.50
15.	75	first mortgage 5% bonds of the Chicago City Railway Company, an Illinois corporation, of the par value of $1,000, each, payable in Chicago	76,400.
16.	35	of the joint 4% bonds of the Northern Pacific Railroad Company, a Wisconsin corporation, and the Great Northern Railway Company, a Minnesota corporation, (C., B. & Q. collateral) of the par value of $1,000, each, payable in New York	34,737.50

Item.	Security.	Clear value.
17.	25 general mortgage 4% bonds of the Atchison, Topeka & Santa Fe Railway Company, a Kansas corporation, of the par value of $1,000, each, payable in New York.....	25,250.
18.	Note of Albert F. Bullen, a citizen of Minnesota, for $25,000., dated November 20th, 1894, due on demand, payable in Chicago, with interest at the rate of 6% per annum.....	None.
19.	Note of Albert F. Bullen, a citizen of Minnesota, for $16,775.20, dated November 1st, 1898, due on demand, payable in Chicago, with interest at the rate of 5% per annum.....	5,392.
20.	Note of W. J. Head, a citizen of Illinois, resident in Chicago, dated September 6th, 1907, with interest at 6% per annum, payable in Chicago, due on demand, secured by 140 shares of the capital stock of Winona Malting Company, balance due on principal, $4,800.....	4,947.20
21.	Note of W. J. Head, a citizen of Illinois, resident in Chicago, dated November 22nd, 1907, due on or before November 22nd, 1908, payable in Chicago, with interest at 6%, for the sum of $6,250., secured by 250 shares of the capital stock of Winona Malting Company.....	6,550.
22.	Policy No. 195589 of the Northwestern Mutual Life Insurance Company, a Wisconsin corporation, for $25,000., on the life of George Bullen, payable to Mary Lenore Bullen, and by her assigned	25,000.
23.	Policy No. 311157 of the Mutual Life Insurance Company, a New York corporation, for $50,000, on the life of George Bullen.....	66,740.
24.	Policy No. 45303, of the Canada Life Assurance Company, a Canada corporation, for $2,000, on the life of Edward Allison Cleghorn, on which the cash surrender value on September 10th, 1908, was $435. (Said policy not assigned by the insured.).....	290.
159		
25.	Policy No. 50160 of the said Canada Life Assurance Company, for $3,000, on the life of Edward Allison Cleghorn, on which on September 10th, 1908, the cash surrender value was $1,087. (Said policy not assigned by the insured.)	721.67
	Cash on deposit in The Northern Trust Company Bank, Chicago, Illinois.....	12,107.02
	Cash on deposit in the Corn Exchange National Bank, Chicago, Illinois.....	2.75

160 EXHIBIT "C."

161 EXHIBIT C.

Further Assignment in Trust.

Know All Men by These Presents, That Whereas I, George Bullen, of the County of Waukesha, in the State of Wisconsin, did on April 4th, 1903, execute and deliver to The Northern Trust Company, an Illinois Corporation, a certain assignment in trust bearing date December 11th, 1902, whereby I assigned and transferred to the said Trust Company, certain personal property particularly described in the schedule thereto attached; and

Whereas, I intended to transfer, at the same time, certain real estate to the said Trust Company to hold under the terms of the said assignment in trust, but have not yet transferred the same; and

Whereas, prior to January 1st, 1904, I repossessed myself of the personal property transferred by the said assignment in trust, but permitted the said assignment in trust to remain in full force and effect with the purpose of transferring the said real estate to the said Trust Company, subject to the trusts set forth in the said assignment in trust; and

Whereas, I now desire to have certain personal property, as well as the said real estate when it shall be transferred, held under the trusts set forth in the said assignment in trust;

Now, therefore, in consideration of the premises and of the sum of One Dollar ($1.00) in hand paid by the said The Northern Trust Company, the receipt whereof is hereby acknowledged, I hereby assign, transfer and set over unto said The Northern Trust Company, its successors and assigns, all those certain life insurance policies, bonds, notes, shares of stock and other personal property particularly described in Schedule A hereto attached, in trust, nevertheless, for the uses and purposes, and subject to the conditions particularly mentioned in my said assignment in trust bearing date December 11th, 1902, to the said The Northern Trust Company.

It is the purpose of this assignment that the property hereby transferred and set over shall be held by the said Trustee upon the same trusts and under the same conditions, and with the same
162 rights and powers as though the said property had been included in the original transfer to the said Trust Company under the said assignment in trust, and I had not repossessed myself of the same.

In Witness whereof, I have hereunto set my hand and seal, at Chicago, this 22nd day of May, A. D. 1907.

(Signed) GEORGE BULLEN. [SEAL.]

(Executed in Duplicate.)

STATE OF ILLINOIS,
County of Cook, ss:

I, A. B. Caswell, a Notary Public in and for the said County and State aforesaid, do hereby certify that George Bullen, who is personally known to me to be the same person who subscribed the above and foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the same as his free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 22nd day of May, A. D. 1907.

(Signed) A. B. CASWELL,
[SEAL.] *Notary Public.*

163 The undersigned hereby acknowledges receipt of the personal property particularly described in Schedule A hereto attached, and accepts the same upon the trusts particularly specified in the above and foregoing instrument.

In witness whereof, the undersigned has caused these presents to be executed by its Secretary thereunto duly authorized, and its corporate seal to be hereto attached, this 22nd day of May, A. D. 1907.

(Signed) THE NORTHERN TRUST COMPANY,
[SEAL.] By H. H. ROCKWELL, *Ass't Secretary.*

(Executed in Duplicate.)

164 SCHEDULE "A."

Personal Property.

May 22, 1907.

One Hundred Ninety-One and one-half (191½) shares of the capital stock of the Fremont Land & Improvement Co., par value $1,000 per share, represented by Certificate No. 4, in the name of George Bullen, and by him endorsed in blank.

Six Hundred Fifteen (615) shares of the capital stock of the United Breweries Company, par value $100 per share, represented by Certificate No. 56, in the name of George Bullen.

One Hundred Fifty (150) shares of the capital stock of The Northern Trust Company, par value $100 per share, represented by Certificate No. 675 for 100 shares, and No. 642 for 50 shares in the name of George Bullen.

One Hundred Ten (110) shares of the capital stock of the Corn Exchange National Bank of Chicago, par value $100 per share, represented by Certificate- No. 25 for 100 shares and No. 365 for 10 shares, each in the name of George Bullen, and by him endorsed in blank.

Receipt of John R. Walsh, Treasurer of the Washington Park Club, dated April 4, 1884, for 20 shares of the capital stock of the Washington Park Club, par value $100 each, represented by stock certificate No. 120 (In liquidation, $400 heretofore paid thereon).

Also assignment of same by George Bullen to The Northern Trust Company.

Fifty (50) shares of the Wisconsin Trust Company, Milwaukee, par value $100 per share, represented by Certificate No. 45, in the name of George Bullen.

One Hundred (100) 20 year 5% Debenture Gold Bonds of the U. S. Realty & Improvement Co., $1,000 each, principal due July 1, 1924, interest payable January and July 1, having coupons maturing July 1, 1907, and thereafter attached.

Two Hundred Eight (208) Refunding 5% Gold Bonds of the Chicago Consolidated Brewing & Malting Co. principal due January 14, 1933, each for $1,000 having coupons maturing July 14, 1907, and thereafter attached, interest payable January and July 14.

One Hundred (100) First Mortgage 5% Bonds of the East Side Electric Railway Co. of Kansas City, Missouri, Nos. 1 to 100, inclusive, principal due July 1, 1911, each for $1,000, interest payable January and July, having coupons maturing July 1, 1907, and thereafter attached.

Fourteen (14) First Mortgage 6% 5/20 Bonds of the Northwestern Brewing Company, principal due December 1, 1910, each for $500, interest payable June and December, having coupons maturing June 1st, 1907, and thereafter attached.

Ten (10) First lien 20 year 5% Gold Bonds of the Central Leather Co. for $1,000 each, principal due April 1, 1925, interest April and October 1, with coupons of October 1, 1907 and thereafter attached.

Two (2) First Mortgage 5% Bonds of the Germania Maennerchor, principal due May 1st, 1909, each for $500, interest payable May and November, having coupons maturing May 1st, 1907, and thereafter attached.

165 Twenty-five (25) 10/60 year Sinking Fund 5% Bonds of the U. S. Steel Co., $1,000 each, principal due April 1, 1963, interest payable May and November 1st, having coupons maturing May 1, 1907, and thereafter attached.

Seventy-five (75) First Mortgage Railroad & Land Grant 4% Gold Bonds of the Union Pacific Railroad Co. for $1,000 each, principal payable July 1, 1947, interest payable January and July 1st, with interest coupons maturing July 1, 1907, and thereafter attached.

Fifty (50) First General Mortgage 4% Gold Bonds of the Wisconsin Central Railway Co. for $1,000 each, principal due July 1, 1949, interest payable January and July 1. Coupons maturing July 1st, 1907 and thereafter attached.

Twenty-five (25) Illinois Division 4% Mortgage Bonds of the Chicago, Burlington & Quincy Railroad Co. for $1,000 each, principal due Jul. 1, 1949, interest payable January and July 1st. Coupons maturin[illegible] July 1st, 1907, and thereafter attached.

Note o[illegible] bert F. Bullen for $25,000, dated November 20, 1894, payable on demand to the order of George Bullen, and by him endorsed in blank. Interest at the rate of 5%. Said note bears endorsements showing interest paid to November 1, 1901.

Note of Albert F. Bullen for $16,775.20, dated November 1, 1898,

payable on demand to the order of George Bullen and by him endorsed in blank, with interest at the rate of 5% per annum. Interest endorsed as paid to November 1, 1901.

Policy fully paid, No. 80088—a/z issued by the Canada Life Assurance Co. on the life of Albert Fitzherbert Bullen for $3,888 payable to Maria L. Bullen and George Bullen; said Maria L. Bullen and Albert Bullen having assigned their interests in said policy to George Bullen, which assignment appears on the policy, but no acknowledgement of assignment by said Canada Life Assurance Co.

Policy fully paid No. 1099134, issued by the Mutual Life Insurance Co. of New York, on the life of Albert F. Bullen for $5,047.00; also assignment of said policy by Maria Louise Bullen to George Bullen, dated November 25, 1894, and assignment of said policy by Albert F. Bullen to George Bullen, dated November 1, 1898. Said assignment not acknowledged by said Insurance Company.

Memorandum dated November 1, 1898, between Albert F. Bullen and Maria L. Bullen, his wife, and George Bullen, concerning sundry insurance policies.

Package of sundry receipts and memoranda relating to above mentioned insurance policies. It is understood that above mentioned Insurance Policies are held as collateral to above mentioned notes of Albert F. Bullen.

Policy fully paid, No. 50160-a/6, issued by the Canada Life Assurance Co. on the life of Edward Alison Cleghorn for $3,000 payable to wife of said Edward Alison Cleghorn and assigned by said wife, Lucy Elizabeth Cleghorn to George Bullen.

Policy fully paid, No. 45303-M/1, issued by the Canada Life Assurance Co. on the life of Edward Alison Cleghorn for $2,000 payable to his Executors, Administrators or Assigns, and assigned by Edward Alison Cleghorn to his wife, Lucy Elizabeth Cleghorn, and duly assigned by said Lucy Elizabeth Cleghorn to George Bullen.

166 Note of W. J. Head for $6,250, dated November 22, 1904, due on or before Nov. 22nd, 1907, with interest at the rate of 5%, secured by 250 shares of the capital stock of the Winona Malting Co. of Minnesota, par value per share $100.

All the books, pictures, household furniture and equipment, and all carriages, wagons, implements, boats, horses and other live stock bedonging to George Bullen, and all his other chattel property appurtenant to the house and farm known as "Minnewoc," in Waukesha Co., Wisconsin.

Policy No. 311157 of the Mutual Life Insurance Co. of New York for $50,000 on the life of George Bullen; payable to the said George Bullen, his executors, administrators or assigns, and all dividend, benefit and advantage to be derived therefrom (Endorsed showing additional $16,740 on Nov. 14, 1902). R.

Policy No. 195589 of the Northwestern Mutual Life Insurance Co. for $25,000 on the life of George Bullen, payable to Mary L.

Bullen and duly assigned to the executors, administrators and assigns of the said George Bullen.

Policy No. 270928 of the New York Life Insurance Co. for $25,000 on the life of George Bullen, payable to his executors, administrators or assigns, and all dividend, benefit and advantage to be derived therefrom.

The foregoing four pages constitute Schedule "A" as referred to in agreement between George Bullen and The Northern Trust Company, dated May 22nd, 1907.

(Signed) THE NORTHERN TRUST COMPANY,
By H. H. ROCKWELL, *Assistant Secretary.*

167 [Endorsed:] Original. State of Wisconsin, County Court Waukesha County. Transfer Tax on Estate of George Bullen, deceased. Stipulation. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for ——. Filed Dec. 1st, 1909. M. S. Griswold, County Judge. Exhibit A. Andrew Snyder, Reporter. Filed Mar. 30, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

167½ "I herewith certify that I am custodian of the record in the above entitled cause, and that the only oral testimony offered in said cause and preserved in the record thereof is that of John R. Montgomery, which testimony is last herein set forth: The testimony of John Ross, Frank H. Putney, L. J. Flotow and W. S. McDowell, who testified only in regard to the real estate belonging to the Estate of George Bullen, and Dr. William T. Murphy, who testified, as an expert, only in regard to the disease from which George Bullen was said to have been suffering prior to his death, the foregoing being all the oral testimony offered in said cause and preserved in the record.

Dated August 30th, 1912.

REX A. WARDER,
Register in Probate of the County Court of Waukesha County, Wisconsin.

168 JOHN R. MONTGOMERY, being first duly sworn testified as follows:

Examination by Mr. Titus:

Q. You are a lawyer and live in Chicago and are in business there?

A. Yes sir. I should like to say at the outset that I have agreed with Mr. Titus that he might call me as to the question of the valuation of one of those stocks, and as to the question of Mr. Bullen's physical condition, as I saw it during the period covered by the trust agreement. I stipulated against anything else, because being an attorney in the case, I didn't want to get into any conflict of testimony.

Q. I will ask you that now, whether the inventory of property

that we made to Exhibit "B" here contains all of the property which was in the hands of the trust company, The Northern Trust Company at the time of his death?

A. Yes sir, it does.

Q. I don't mean to speak of the real estate, just the personal, the movable property?

A. Yes sir.

Q. Now, I will call your attention in particular to item one of the item of 191½ shares of the Freemont Land & Improvement Company's stock, and ask you to state what was the value of that stock at the time of Mr. Bullen's death?

169 A. I find it difficult to state with any degree of accuracy, because it is a stock for which there is no mortgage, but on the facts that I know about it, I should say that the value did not exceed 60¢ on the dollar.

Q. You don't mean to say that the company does not own property, which would make it of the value, face value, do you, Mr. Montgomery?

A. No, I think the property owned by the company might be regarded as worth more than the face value of the stock. I don't think however, that a purchaser could have been found at that time at a value; my personal opinion would be at a value in excess of 60¢ on the dollar, although I may say that I have agreed with Mr. Titus to stipulate to the value of 75¢ on the dollar, and am willing to concede that for this suit.

Q. One of the principal reasons for your regarding it of less value is of the fact that Mr. Bullen died and have been unable to give personal attention to it that otherwise would have been given to it, is that the idea?

A. He had in times past given some personal attention to it. My idea is that the other stockholders are handling it.—who hold the controlling interest, are handling the stock pretty much in their own interest, and that in order to make the stock of value, there will probably be a law suit involved, and one of considerable magnitude.

Q. And that is one of the reasons why you regard the 170 stock—for that reason of less value than the face value?

A. Yes sir.

Q. I will inquire what you have got to say in regard to his ability to get around during the time *during the time* that you attended to his business, and a number of years that you did attend to his business, Mr. Montgomery?

A. I don't recall the exact dates at which he first—I first observed that he was incapacitated in the way of getting around comfortably. I do recall that on the first interview that I had with him, which was in the—the first interview that I had w[illegible]n in regard to the trust agreement here in question, which was in either 1900 or 1901, he found it difficult to walk, he walked with a cane, he walked without assistance and came into my office alone, and from that time on he always seemed to experience some difficulty in walking, although at intervals down to within two or three or four or five months prior to his death he came to my office, and I met him and walked about

the streets of Chicago with him, and during all that time he appeared to be in about the same condition, except I may say that during the last—about the last three years of his life he seemed to suffer less, and while he got about with about the same degree of difficulty, he appeared to have less strain, and less trouble from his disease.

Q. Did you observe that his disease incapacitated him to any extent in attending to his business affairs?

171 A. No, I think not, he exhibited possibly a slight increase of lack of power of concentration, mental concentration, he was a man of very vigorous personality, who concentrated his mind upon a business proposition very keenly. I noticed there was no change in that respect, except that after along about 1905, I observed that after he had been going over his subject for half or three quarters of an hour, he seemed to get tired, and not want to approach the matter, and then from that time on until the last time I saw him, there was no substantial change in his mental condition, as far as I could observe.

Q. I wish you would explain to the court, the seeming inconsistency in one of the stipulations here in regard to the delivery, or the time of making the trust agreement, the delivery of the property to the trustee, and that contained in the recitation at the head of the second assignment, you know what I have reference to?

A. When I drew for him the instrument entitled, further assignment in trust, Exhibit C, of our stipulation, I noted the certificate of acknowledgment on the original trust assignment was dated in April 4th, 1903, and recited that the instrument was delivered at that time, as the stipulation states. The instrument was signed and the delivery made of the securities to the Northern Trust Company on December 11th, 1902.

Q. And the acknowledgment was?

172 A. The acknowledgment was made—there was a delay of considerable time to obtain the assignment of the insurance policy which stood in Mrs. Bullen's name, payable to her, and in which there was no provision for the change of beneficiaries, that substantially concluded our arrangement for the transfer of this security, and the assuming of the trust except for the delivery of the assignment of these insurance policies, and the delivery of the deed of the real estate. We concluded this on December 11th, 1902, the assignment of the insurance policy was obtained from Mrs. Bullen before the end of that month, December, 1902, and it was—the assignment was delivered to the Northern Trust Company, the securities had been delivered to them on December 11th, 1902, and the deeds for which we were waiting never were delivered to them. Mr. Bullen went abroad, Mr. Bullen and his family went abroad, as I recall in the latter part of December, 1902, and when he returned in the spring of 1903, he had the acknowledgment to the trust assignment made.

By the Court: That is the acknowledgment which you referred to or have referred to as of April 4th, 1903, then?

A. Yes sir.

Q. I wish you would state the reason for this second assignment,

the reason for repossessing himself of this property under this assignment?

A. I don't know that I have any objection to stating it. It is stated in the stipulation that he did, and he repossessed himself only
173 in a technical sense. The manual possession of the securities was always, after December 11th, 1902, with the Northern Trust Company, although upon one or two occasions they held them giving a receipt for them as agent, and technically turned them back to him as trustee, but in so doing they never delivered the manual possession of the securities, and they were always in their vaults at Chicago.

Q. It is owning to that turning them back to him that the second assignment was made, or did it contain other property?

A. Yes, in order to raise no question, in order to save any possible after effects that the securities were held from that time on absolutely under the trust agreement, not because it was in my judgment entirely necessary but because I did not want to take any chances on it.

Q. Was Mr. Bullen in Europe or out of this country more than once during this time after you first knew him?

A. Oh yes, many times after I first knew him.

Q. Yes?

A. I knew him first——

Q. After you first did business with him, after 1900?

A. With reference to this or with reference to other matters.

Q. I mean to say from 1900?

A. He was for several—on several occasions, I don't remember how many, but probably pretty nearly as often as once a year he went abroad.

174 Cross-examination by Mr. Frame:

Mr. Frame: If the Court will permit me, and it is agreeable to the other side, we will just approach the question of the deduction to be made by reason of the attorneys' fees.

By Mr. Titus: The deductions from this estate for inheritance tax purposes are quite large in our stipulation.

By Mr. Titus: There in our stipulation, everything is stipulated, I think except attorneys' fees that is to amount to *everything*.

By Mr. Frame:

Q. You are of course an attorney of record and have practiced for a great many years?

A. Yes sir.

Q. About how many years, Mr. Montgomery?

A. 20 years.

Q. And are familiar with the ordinary fees and charges in matters of settlement of estates?

A. Yes sir.

Q. And in matters of inheritance tax of this class of litigation, are you?

A. Yes sir.

Q. Do you know what those services are fairly and reasonably worth?

A. I believe that a usual and customary and reasonable fee for the work which one would naturally anticipate might be required in such matters would be $5,000.00.

175 By Mr. Titus: You are speaking now only of the inheritance tax matters, are you?

A. Yes sir.

Q. The amount of the inheritance tax in the State of Illinois is spoken of in the stipulation as $8,000.00?

A. Yes sir.

Q. The amount that possibly—that could pjossibly be collected in this state for everything here included would not exceed $10,000.00 anyway would it?

A. $10,000.00?

Mr. Titus:

Q. Yes. I have not made any attempt to figure it. I have put it at approximately along there. It would not exceed that?

A. If that is a fact, I should want to change my testimony.

By Mr. Titus: About the taxes, you paid some taxes, was that on the personal, or what did that include the taxes on?

A. In Illinois, in the Illinois taxes, as I understand—I don't recall the details of that. I could get it out of the Illinois report.

Q. You stipulated also about a certain amount of property tax, now I want to inquire of you in that regard whether that was on the personal property, or on the real estate where it was located, we have it here that at the time of the death of George Bullen there were also taxes which were at the time held to be a lien upon the property held by the Northern Trust Company. There was now—whether it was taxes which were liens on real property, I would *say* at the

176 outset, all the real property in Wisconsin in December or September 10th—do you know about that?

A. I don't believe that I recall about that. I remember that there was some testimony about it in the hearing in Chicago, and that it was held there, from which I assumed that it was taxes on personal property in the hands of the Northern Trust Company, but about that I really hav-n't any knowledge or recollection. Now, inasmuch as there was no real estate in Illinois, I assume that it must be in that personal property only.

By the Court: Referring to trust agreement Exhibit A, annexed to the stipulation, the 3rd paragraph provides for an annuity of $900 a year to Lucy E. Cleghorn, a niece, for life, and an annuity of $900 a year to Annie Graham, a sister, for life. Those are the only provisions made for those two in that agreement, I think?

A. Yes, sir.

Q. And they are living yet, I suppose?

A. Yes, sir.

The Court: Those are the two whose ages you have supplied?

A. Yes, sir.

The Court: The 4th paragraph of the agreement provides for cer-

tain benefits to two sisters, to the sister Mary T. Harris and
177 Victoria Bullen, and a niece Helen Mary Harris out of the profits of the house and lot in London, Ontario, Canada?

A. Yes, sir.

Q. They are not interested in there otherwise in the trust, except that provision, are they?

A. Not otherwise.

By the Court:

Q. That property, did he die possessed of that property in Canada, do you know?

A. No, that had been deeded to the Northern Trust Company by a deed in which Mrs. Bullen did not join.

Q. Under the assignment in that deed with the exception of such rights as Mrs. Bullen may have left holding that under that trust in the 4th paragraph, for the benefit of those beneficiaries?

A. Yes, sir. I think that the trust property held in Illinois is sufficient to this amply. You see there is a million dollars' worth of personal property there or nearly that, anyway. There is $900,000 worth, which would undoubtedly take care of this item.

There is other estate as indicated by the exhibit here in evidence, and the value of it isn't shown, and I haven't the remotest idea what the value is. I can find out very soon, or no doubt Mr. Titus would. I should think that $100,000 might not be out of the way. I don't know.

178 Q. That is real estate in other places, real estate in other places than in Wisconsin or Illinois?

A. Yes, sir.

Mr. Frame: Now, that is all the testimony that we have today, judge, with the exception that later we want to call Mr. McDowell on the day that we adjourn to. We would like to call him that day.

Court: Very well.

179 [Endorsed:] State of Wisconsin. County Court, Waukesha County. In the Matter of the Estate of George Bullen, Deceased. Testimony of John R. Montgomery Taken on December 1st, 1909. Filed in Circuit Court, Waukesha County, Wis., Mar. 12, 1910. E. M. Webb, Clerk. Filed Dec. 16, 1909. M. S. Griswold, Co. Judge. Filed in the Circuit Court, Dodge County, Wis., Feb. 21, 1910. John Clifford, Clerk.

180 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In re Estate of GEORGE BULLEN, Dec'd, and Assessment of Transfer Tax Therein.

It is hereby stipulated between the State of Wisconsin by its Attorney General and T. W. Haight, Public Administrator of Waukesha County and Special Administrator of said estate, Mary Lenore

Bullen and George Bullen Jr. by their attorneys and Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen by C. W. Newbury, their guardian ad litem, that the following statements of fact are to be added to the former stipulation of facts in this proceeding subject to all the conditions, reservations and limitations therein contained; to wit:

That said George Bullen deceased received during his lifetime the entire net income from the trust estate held by the Northern Trust Company.

That prior to the death of said decedent The Northern Trust Company made returns to the tax assessors in Cook County, Illinois, of the value of said trust estate and paid the taxes thereon levied on the valuation made by the said assessors.

That the Circuit Court may determine from the testimony in the County Court the value of decedent's real estate in Waukesha County and the value of the stock of the Fremont Land and Improvement Company held by The Northern Trust Company.

The books, pictures, household furniture and equipment and other chattel property described as appurtenant to Minnewoc are of the clear value of $20,000.00.

Feb. 21, 1910.

A. C. TITUS, *Ass't Att'y Gen.*
THERON W. HAIGHT,
Pub. Adm'r Waukesha Co. & Special Adm'r.
RITSHER, MONTGOMERY, HART & ABBOTT.
FRAME & BLACKSTONE.
C. W. NEWBURY, *Gd'n ad Litem.*

181 [Endorsed:] Circuit Court, Waukesha County. In re Estate of George Bullen, Dec. Stipulation. Filed in the Circuit Court, Dodge County, Wis., Feb. 21, 1910. John Clifford, Clerk. Filed Mar. 30, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

182 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and Assessment of Inheritance Tax Therein.

Now comes Mary Lenore Bullen, and George Bullen Jr., by Ritsher, Montgomery, Hart and Abbott, and Frame & Blackstone, their attorneys, and Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, minors by C. W. Newbury, their guardian ad litem, and all appellants in said matter, and make and file and ask for the following findings of fact and conclusions of law in the above entitled matter.

Dated February 21st, 1910.

183 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and of the Determination of the Transfer Tax Therein.

Appellants' Proposed Findings.

At a term of said Court, commencing on the First Tuesday of February, 1910, being the first day of February, and on the 19th day of February, 1910.

Present: Honorable Martin L. Lueck, Circuit Judge.

The above entitled matter being at issue before this Court on appeal to this Court by the heirs of said George Bullen, deceased, from an order of the County Court for Waukesha County, Wisconsin, wherein a transfer tax was assessed against the heirs of said George Bullen, deceased, and said matter being now heard by this said Court with the consent of all parties appearing and now appearing, the appellants Mary Lenore Bullen, widow of said deceased and George Bullen Jr., an adult son of said deceased by John R. Montgomery and Messrs. Frame & Blackstone, their attorneys, and also appearing Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, the minor children of said deceased by C. W. Newbury Esq., their duly appointed guardian ad litem; and appearing the respondents Theron W. Haight, the public administrator of the County of Waukesha and also the special administrator of said estate for the purpose of collection of said tax, only, in person; and the State of Wisconsin appearing by the Attorney General of Wisconsin, by A. C. Titus, Assistant Attorney General for said State, and all of said appellants having at the outset and at all times objected to the considering of, or imposition of any transfer tax upon any property transferred to the Northern Trust Company of Chicago for the reason that if the State of Wisconsin or its officers should
184 levy and collect any inheritance tax upon said property transferred to The Northern Trust Company by said George Bullen other than the real estate and chattels located in Wisconsin that the said State would thereby take the private property of these said appellants for public use without just compensation and would deprive them of their property without due process of law, and would deny to them the equal protection of the laws and would also impair the obligation of the contract between George Bullen and The Northern Trust Company in violation of the Constitution of the United States and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin; and said Court having at this time heard the proofs and allegations of the parties and being fully satisfied in relation to the questions involved, makes its Findings of Fact and Conclusions of Law, and order for judgment herein as follows:

Findings of Fact.

1.

That the said appellants Mary Lenore Bullen and George Bullen Jr. and Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, minors by C. W. Newbury, their guardian ad litem immediately upon said case being called and ready for trial objected to the right, power and authority and to the consideration and imposition of any inheritance tax upon any property transferred to the Northern Trust Company, a corporation organized under the laws of Illinois, and located at Chicago, Illinois, for the reason that should any such tax be levied and collected upon any of said property transferred to the Northern Trust Company, other than the real estate and chattels located in Wisconsin, the said State would thereby take the private property of said appellants for public use without just compensation, and would deprive the said appellants of their property without due process of law, and would deny to them the equal protection of law, and would also impair the obligation of the contract between George Bullen and the said Northern Trust Company in violation of the Constitution of the United States, and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin.

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2.

That said George Bullen, died on the 10th day of September, 1908, at his home near Oconomowoc in the County of Waukesha, Wisconsin, being at the time of his death a resident and inhabitant of said County of Waukesha, and that no proceedings had been had in any Court in said State for the probate or administration of the estate of said deceased, other than and until proceedings now here pending, wherein the said Theron W. Haight the public administrator of said County was also granted Special Administration for the purpose of determining whether any transfer tax was due from said estate; and that said proceedings were instigated at the solicitation of the heirs of said George Bullen, deceased.

3.

That said deceased originally resided in Chicago, Illinois, but about 1892 removed his home to near Oconomowoc, Wisconsin, but continued to transact business in Chicago down to the time of death. That for several years prior to his death, and commencing a period prior to 1902, and thence on continually to the time of his death, said deceased was afflicted with a disease known as Ataxia locomotor. That the progress of said disease has been slow with the ceased or completely arrested, and up to a short time before his eath, he was able to get around and transact business in Chicago nd elsewhere. That said disease is one which is of long duration nd apt to be arrested in its progress, leaving the patient at whatever

stage he has arrived for a good many years, and liable to result in incapacity of the patient to take the active management and care of his affairs.

4.

That said George Bullen knowing of his condiiton and fearing that he might become incapacitated to look after his own affairs, commenced negotiations with the Northern Trust Company, a corporation organized under the laws of Illinois, to act as trustee for him and certain other beneficiaries, and on December 11th, 1902, after negotiations lasting for nearly two years, said George Bullen made, executed and delivered to said Northern Trust Company an instrument in writing assigning to said company certain
186 real estate and personal property and assets as shown by schedule thereto annexed, for the purposes expressed in such assignment, a copy of which said assignment and schedule of properties marked Exhibit A, is annexed to the stipulation of the parties herein, and to which reference is hereby made for all purposes as to its contents as if fully incorporated herein.

V.

That at the time of the execution of said trust assignment, December 11th, 1902, all the personal assets consisting of bonds, mortgages, notes, certificates, trust deeds, guarantees, stocks and life insurance policies enumerated in the schedule annexed to such assignment were made over and delivered to the Northern Trust Company to have and hold thereafter under such trust assignment, and that in fact said Trust Company then and thereupon took possession of all personal assets scheduled in such list, excepting the personal estate or chattel property of said George Bullen appurtenant to his house and farm known as "Minnewoc" in Waukesha County, Wisconsin, but of the real estate included in the terms of such assignment, said Trust Company did not take possession of said "Minnewoc" being about 95 acres of land located in Waukesha County, Wisconsin.

VI.

That all during the time of said negotiations for said Trust Assignment and at the time of the assignment, transfer and delivery thereof, and ever since said date, all of said notes, bonds, mortgages and all other personal property, listed in said schedule of assets so turned over to said Northern Trust Company, other than and aside from that located at "Minnewoc," and which is found to be valued at $20,000 have been located, held and situated outside of the State of Wisconsin, and at the City of Chicago, Illinois, and never has been within the State of Wisconsin. That all of said stock certificates and notes were assigned to said Trust Company by endorsement in blank, and that since the death of said George Bullen

Wisconsin Trust Company for $6,250.00. That all of said
187 arrangements between said George Bullen and the said Trust Company with reference to said assignment in trust, and the further assignment in trust, and the assignment of said securities and assets attached to said schedule of assets, were made in Chicago.

VII.

That at the time negotiations for the arrangement between the said George Bullen, deceased and the Northern Trust Company were begun, the said Mary Lenore Bullen, wife of said deceased, was suffering from some nervous trouble, and was in a precarious state of health, so continuing down to the date of his death.

VIII.

That before an agreement could be reached finally as to the terms of said trust assignment above mentioned, there was a good deal of discussion with the wife of said deceased, she refusing to sign the deeds with her husband to relinquish her dower and other rights, unless Mr. Bullen should make some provision in said trust assignment for an income for her mother. Said Mrs. Bullen also at first refused to assign the policy of the Northwestern Mutual Life Insurance Company on Mr. Bullen's life, payable to her, and only did so, finally, as part of the consideration for the provision in said contract made for her. She never did sign the deed to the real estate located in Wisconsin, and known as Minnewoc, and the homestead of said deceased.

IX.

That ever since the making of said assignment in trust in December, 1902, said Northern Trust Company has been in the manual possession and control of all the stocks, securities, policies of insurance and personal property as set forth in said schedule accompanying said assignment, excepting such of said assets as have been exchanged or sold to replace those represented by said estate originally turned over to said Trust Company, and excepting also much of said assets as were temporarily returned to said George Bullen, to exchange, but which were then held by him through the Northern Trust Company acting as his agent, and only temporarily so held prior to being reassigned to said Northern Trust Company under
188 the Further Assignment in Trust, a copy of which is attached to said stipulation above referred to and which is made a part hereof by this reference, and which were so placed under the terms and conditions of said original assignment in trust, executed December 11th, 1902—and have ever since been so held by said Trust Company; and that said Trust Company has been in possession of all said property so scheduled, excepting also the chattel

any control; for the reason that said Trust Company was not authorized to transact business in Wisconsin, having never complied with its laws.

X.

That the said deceased at the time of his death owed the following debts and charges which are found to be properly chargeable to his estate which is taxable in Wisconsin:

Debts and expenses of last sickness	$5,960.37
Charges of the Trustee to date of death	10,000.00
Attorneys' fees, deemed reasonable	5,000.00

XI.

That while said George Bullen attempted to transfer to the Trust Company his real estate located in Waukesha County, Wisconsin, under the terms of said trust assignment, his wife Mary Lenore Bullen, never joined with him in any deed or transfer thereof and never relinquished her right of lower and homestead therein, and the said trust company never took possession or control over said real estate, and for the purpose of this proceeding said real estate, which constituted the homestead of the deceased, is deemed to have passed to the widow and four children of said deceased, under the intestate laws of the State of Wisconsin.

That the fair market value of said real estate at the death of said deceased was $40,000 and that the value of the interest of the said Mary Lenore Bullen, widow of said deceased, for her dower and homestead interests therein at the death making computation on the basis of $5,000 for her homestead interests and one third of the remaining $35,000 of value of property or $11,666.66 with
189 respect to dower, and her age at the death of said deceased being 45 years, is $— and deducting $— from said total value of real estate, $40,000, leaves $— as the value of the interests of said four children of the deceased at his death in said real estate or $— as the clear value of the interest therein of each of them at the death of said deceased.

XII.

There was in the possession of the said deceased and situated on his homestead in Waukesha County, Wisconsin, at the time of his death chattel property such as books, pictures household furniture and equipment, horses, carriages and like property appurtenant to said farm and home of the fair value of $20,000 and while said George Bullen by said assignment in trust purported to transfer and assign said chattel property to said trust company he never made manual delivery thereof and said trust company never took possession of any part thereof or attempted to exercise any control or dominion over the same; and there was also on hand money on deposit in the name of said deceased, at Chicago, in the sum of $12,109.75 subject to check of said deceased and not held by said trust company in trust under said assignment. That the sum of said

chattel property and said bank account making together $32,109.75 is deemed and taken for the purposes of this proceedings as passing on the death of said deceased to his widow and four children in equal shares of one fifth to each or $6,421.95 to each.

XIII.

That the said George Bullen made and entered into the two trust assignments referred to in the foregoing findings not in contemplation of death and not to take effect at or after his death, but did enter into said trust assignments with the expectation that he would live for some years and that during said time he might, from the disease with which he was afflicted, become incapable of attending to his affairs and managing his estate and caring for himself, and also with the intention of providing for himself, his wife, children and other beneficiaries named in said trust agreement, during his lifetime.

190

XIV.

That the transfer tax assessable against the heirs of said George Bullen, deceased upon the property located in Wisconsin, and upon the said bank account as above found and determined, and the clear values of the interests therein of the beneficiaries respectively, less exemptions from said tax as provided by statutes and computing said tax at the rates provided by law, are as follows—, after deducting also debts, exemptions and expenses:—

	Clear value.	Exempt.	Tax.
Mary Lenore Bullen, Widow...	$....	$10,000	$....
George Bullen, Jr., child.....	$....	2,000	$....
Rich'd Nixon Bullen "	$....	2,000	$....
Wm. Graham Bullen "	$....	2,000	$....
John Nixon Bullen "	$....	2,000	$....

XV.

That the property transferred to the Northern Trust Company by said George Bullen was so transferred, and the title thereto vested in said Northern Trust Company by an instrument and contract executed outside of and governed by laws outside of Wisconsin, to a resident of Illinois, of property situated in Illinois, and said property was so transferred and passed to the Northern Trust Company before the inheritance tax law was in effect in said State of Wisconsin.

That said transfer was effectual to transfer and did so transfer said property at said time, to-wit December 11th, 1902 and that upon the death of said George Bullen no property remained in Wisconsin subject to transfer tax excepting said real estate, and chattels located near Oconomowoc, Wisconsin.

any control; for the reason that said Trust Company was not authorized to transact business in Wisconsin, having never complied with its laws.

X.

That the said deceased at the time of his death owed the following debts and charges which are found to be properly chargeable to his estate which is taxable in Wisconsin:

Debts and expenses of last sickness	$5,960.37
Charges of the Trustee to date of death	10,000.00
Attorneys' fees, deemed reasonable	5,000.00

XI.

That while said George Bullen attempted to transfer to the Trust Company his real estate located in Waukesha County, Wisconsin, under the terms of said trust assignment, his wife Mary Lenore Bullen, never joined with him in any deed or transfer thereof and never relinquished her right of lower and homestead therein, and the said trust company never took possession or control over said real estate, and for the purpose of this proceeding said real estate, which constituted the homestead of the deceased, is deemed to have passed to the widow and four children of said deceased, under the intestate laws of the State of Wisconsin.

That the fair market value of said real estate at the death of said deceased was $40,000 and that the value of the interest of the said Mary Lenore Bullen, widow of said deceased, for her dower and homestead interests therein at the death making computation on the basis of $5,000 for her homestead interests and one third of the remaining $35,000 of value of property or $11,666.66 with
189 respect to dower, and her age at the death of said deceased being 45 years, is $— and deducting $— from said total value of real estate, $40,000, leaves $— as the value of the interests of said four children of the deceased at his death in said real estate or $— as the clear value of the interest therein of each of them at the death of said deceased.

XII.

There was in the possession of the said deceased and situated on his homestead in Waukesha County, Wisconsin, at the time of his death chattel property such as books, pictures household furniture and equipment, horses, carriages and like property appurtenant to said farm and home of the fair value of $20,000 and while said George Bullen by said assignment in trust purported to transfer and assign said chattel property to said trust company he never made manual delivery thereof and said trust company never took possession of any part thereof or attempted to exercise any control or dominion over the same; and there was also on hand money on deposit in the name of said deceased, at Chicago, in the sum of $12,109.75 subject to check of said deceased and not held by said trust company in trust under said assignment. That the sum of said

chattel property and said bank account making together $32,109.75 is deemed and taken for the purposes of this proceedings as passing on the death of said deceased to his widow and four children in equal shares of one fifth to each or $6,421.95 to each.

XIII.

That the said George Bullen made and entered into the two trust assignments referred to in the foregoing findings not in contemplation of death and not to take effect at or after his death, but did enter into said trust assignments with the expectation that he would live for some years and that during said time he might, from the disease with which he was afflicted, become incapable of attending to his affairs and managing his estate and caring for himself, and also with the intention of providing for himself, his wife, children and other beneficiaries named in said trust agreement, during his lifetime.

190

XIV.

That the transfer tax assessable against the heirs of said George Bullen, deceased upon the property located in Wisconsin, and upon the said bank account as above found and determined, and the clear values of the interests therein of the beneficiaries respectively, less exemptions from said tax as provided by statutes and computing said tax at the rates provided by law, are as follows—, after deducting also debts, exemptions and expenses:—

	Clear value.	Exempt.	Tax.
Mary Lenore Bullen, Widow...	$....	$10,000	$....
George Bullen, Jr., child.....	$....	2,000	$....
Rich'd Nixon Bullen "	$....	2,000	$....
Wm. Graham Bullen "	$....	2,000	$....
John Nixon Bullen "	$....	2,000	$....

XV.

That the property transferred to the Northern Trust Company by said George Bullen was so transferred, and the title thereto vested in said Northern Trust Company by an instrument and contract executed outside of and governed by laws outside of Wisconsin, to a resident of Illinois, of property situated in Illinois, and said property was so transferred and passed to the Northern Trust Company before the inheritance tax law was in effect in said State of Wisconsin.

That said transfer was effectual to transfer and did so transfer said property at said time, to-wit December 11th, 1902 and that upon the death of said George Bullen no property remained in Wisconsin subject to transfer tax excepting said real estate, and chattels located near Oconomowoc, Wisconsin.

XVI.

That prior to the death of said George Bullen, the Northern Tru Company made returns to the tax assessors in Cook County, Illino of the value of said trust estate described in Exhibit "B" attache to the stipulation on file herein; and paid taxes levied upon th valuation made by the assessors on said property in the State of Il nois for the years it held said property prior to the death of sai George Bullen.

191 *Conclusions of Law.*

As conclusions of law from the facts hereinbefore found an under the evidence submitted the court finds that only the real estat situate in Waukesha County, Wisconsin and the chattel property i said county of the value of $20,000, as above found, and said mone in Chicago subject to check as found, amounting to $12,109.75 i subject to transfer tax in this estate, under the laws of the State o Wisconsin, and that there is no other property belonging to thi estate, subject to transfer tax in this State.

That the order and judgment of this court should now be made determining and assessing such tax upon the clear values of the several interests of the heirs of the said George Bullen, deceased, as hereinbefore found and valuing those interests and fixing such tax in conformity to the last above finding of fact herein.

Let order and judgment be made accordingly.

By the Court.

_____,
Circuit Judge.

The foregoing proposed findings of fact and Conclusions of law were proposed, presented and received before the signing and making of the findings of this case; and the foregoing are refused except as covered by the findings of the Court.

Dated March 9th, 1910.

MARTIN L. LUECK,
Circuit Judge.

192 [Endorsed] Original. State of Wisconsin Circuit Court Waukesha County. In the Matter of the Estate of George Bullen, Deceased. Appellants' Proposed Findings. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for Mary L. Bullen et al. Filed in Circuit Court Mar. 11, 1910, Waukesha County, Wis. E. M Webb, Clerk. Filed Mar. 30, 1910, Clarence Kellogg, Clerk of Supreme Court, Wis.

193 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

Exceptions to Refusal to Findings Proposed.

Now come Mary Lenore Bullen and George Bullen Jr., by their attorneys Ritsher, Montgomery, Hart & Abbott, and Frame & Blackstone; and also Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, *minors* by their guardian ad litem C. W. Newbury, and severally and separately make, file and present, these their exceptions to the refusal of the Court to find as request- by them and each of them, in the above entitled matter; all of said parties being appellants herein and being hereinafter so designated.

1.

Said appellants and each of them except to the refusal of the Court to find as requested by them in their first proposed finding of fact, as follows:—

"That the said appellants Mary Lenore Bullen and George Bullen Jr. and Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, minors by C. W. Newbury their guardian ad litem immediately upon said case being called and ready for trial objected to the right, power and authority and to the consideration of and to the imposition of any inheritance tax upon any property transferred to the Northern Trust Company, a corporation organized under the laws of Illinois, and located at Chicago, Illinois for the reason that should any such tax be levied and collected upon any of said property transferred to the Northern Trust Company, other than the real estate and chattels located in Wisconsin, the said State would thereby take the private property, of said appellants for public use without just compensation, and would thereby deprive the said appellants of their property without due process of law, and would thereby deny to them the equal protection of the laws, and would also impair the obligation of the contract between George Bullen and the said Northern Trust Company in violation of the
194 Constitution of the United States and of the fifth and fourteenth amendments thereof, and in violation of the Constitution and laws of the State of Wisconsin".

2.

Said appellants except to the refusal of the Court to find the fact contained in their second proposed finding of fact, which reads as follows:—

"and that said proceedings were instituted at the solicitation of the heirs of said George Bullen, deceased".

3.

Said appellants except to the refusal of the Court to find the facts contained in their third proposed finding of fact, which reads as follows:—

"That said deceased originally resided in Chicago, Illinois but about 1892 removed his home to near Oconomowoc, Wisconsin but continued to transact business in Chicago down to the time of his death" * * * "That the progress of said disease had been slow with the deceased or completely arrested, and up to a short time before his death he was able to get around and transact business in Chicago and elsewhere. That said disease is one which is of long duration and apt to be arrested in its progress, leaving the patient in whatever stage he has arrived for a good many years and liable to result in incapacity of the patient to take the active management and care of his affairs".

4.

Said appellants except to the refusal of the court to find the fact contained in their fourth proposed finding of fact, which reads as follows:—

"That said George Bullen knowing of his condition and fearing that he might become incapacitated to look after his own affairs commenced negotiations with the Northern Trust Company, a corporation organized under the laws of the State of Illinois to act as trustee for him, and certain other beneficiaries, and on December 11th 1902 after negotiations lasting nearly two years said George Bullen made, executed and delivered to said Northern Trust Company an instrument in writing assigning to said company certain real estate and personal property and assets as shown by schedule thereto annexed, for the purposes expressed in said assignment, a copy of which said assignment and schedule of properties
195 marked Exhibit "A" is annexed to the stipulation of the parties herein and is part of the record herein and to which reference is hereby made for all purposes to its contents as if fully incorporated herein".

5.

Said appellants except to the refusal of the court to find the fact contained in their sixth proposed finding of fact which reads as follows:—

"That all during the time of said negotiations for said trust assignment and at the time of the assignment transfer and delivery thereof and ever since said date all of said notes, bonds, mortgages and all other personal property listed in said schedule of assets so turned over to the Northern Trust Company other than and aside from that located at Minnewoc and which is found to be of the value of $20,000 have been located, held and situated outside of the State of Wisconsin, and at the city of Chicago, Ill. and never have been within the State of Wisconsin." * * * "That all of said arrangements between said George Bullen and the said trust company with reference to said assignment in trust and said further assignment in trust

and the assignment of said securities and assets attached to said schedule of assets were made in Chicago".

6.

Said appellants except to the refusal of the court to find the fact contained in their ninth proposed finding of fact which reads as follows:—

"That ever since the making of said assignment in trust in December 1902 said Northern Trust Company has been in the manual possession and control of all the stocks, securities, policies of insurance and personal property as set forth in the schedule accompanying said assignment, excepting such of said assets as have been exchanged or sold to replace those represented by said assets originally turned over to said trust company and excepting also such of said assets as were temporarily returned to said George Bullen to exchange but which were then held by him through the Northern Trust Company acting as his agent, and only temporarily so held prior to being re-assigned to said Northern Trust Company under the further assignment in trust, a copy of which is attached to said stipulation above referred to and which is made a part hereof by this reference, and which were so placed under the terms and conditions of said original assignment in trust, executed December 11th 1902 and have ever since been so held by said trust company".

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7.

Said appellants except to the refusal of the court to find the fact contained in their thirteenth proposed finding of fact which reads as follows:—

"That the said George Bullen made and entered into the two trust assignments referred to in the foregoing findings, not in contemplation of death and not to take effect at or after his death but did enter into said trust assignment with the expectation that he would live for some years and that during said time he might, from the disease with which he was afflicted, become incapable of attending to his affairs and of managing his estate and caring for himself, and also with the intention of providing for himself, his wife, children and other beneficiaries named in said trust agreement during his lifetime."

8.

Said appellants except to the refusal of the court to find the fact contained in their fifteenth proposed finding of fact which reads as follows:—

"That the property transferred to the Northern Trust Company by said George Bullen was so transferred and the title thereto vested in said Northern Trust Company by an instrument and contract executed outside of and governed by laws outside of Wisconsin, to a resident of Illinois, of property situated in Illinois, and said property was so transferred and passed to the Northern Trust Company before the inheritance tax law was in effect in said State of Wisconsin." "That said transfer was effectual to transfer and did so

transfer said property at said time to-wit. December 11th 1902 and that upon the death of said George Bullen no property remained in Wisconsin subject to transfer tax excepting said real estate and chattels located near Oconomowoc, Wisconsin."

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9.

Said appellants except to the refusal of the court to find the fact contained in their sixteenth proposed finding of fact which reads as follows:—

"That prior to the death of said George Bullen the Northern Trust Company made returns to the tax assessors in Cook County Illinois of the value of said trust estate described in Exhibit "B" attached to the stipulation on file herein; and paid taxes levied upon the valuation made by the assessors on said property, in the State of Illinois for the years it held said property prior to the death of said George Bullen.

10.

Said appellants except to the refusal of the court to find the conclusions of law as proposed in said proposed findings of fact and conclusions of law, which read as follows:—

"As conclusions of law from the facts herein before found and under the evidence submitted the court finds that only the real estate situate in Waukesha County, Wisconsin, and the chattel property in said county of the value of $20,000 as above found and said money in Chicago subject to check as found, amounting to $12,109.75 is subject to transfer tax in this state under the laws of Wisconsin and that there is no other property belonging to this estate subject to transfer tax in this state.

That the order and judgment of this court should now be made determining and assessing such tax upon the clear values of the several interests of the heirs of said George Bullen deceased, as hereinbefore found and valueing those interests and fixing such tax in conformity to the last above finding of fact herein."

Dated March 10th, 1910.

RITSHER, MONTGOMERY,
HART & ABBOTT,
FRAME & BLACKSTONE,
Att'ys for Mary Lenore Bullen and George Bullen, Jr.
C. W. NEWBURY,
As Guardian ad Litem for Richard Nixon Bullen, William Graham Bullen, and John Nixon Bullen, Minors.

198 [Endorsed:] Original. State of Wisconsin. Circuit Court Waukesha County. In the Matter of Estate of George Bullen. Exceptions to refusal of court to find as requested. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for Appellants. Filed in Circuit Court Mar. 10, 1910. Waukesha County, Wis., E. M. Webb, Clerk. Filed Mar. 30, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

199 STATE OF WISCONSIN:

Circuit Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased.

Now come Mary Lenore Bullen and George Bullen Jr., by their attorneys Ritsher, Montgomery, Hart & Abbott, and Frame & Blackstone; and also Richard Nixon Bullen, William Graham Bullen and John Nixon Bullen, by their guardian ad litem C. W. Newbury and do severally and separately state, make and file these their exceptions to the findings of fact and conclusions of law as made and entered in the above entitled matter on the 9th day of March, 1910.

1.

Said above named parties and each of them hereby except to that part of the third finding of fact herein which reads as follows:—"That after the execution of the said agreement and prior to January 1, 1904, said George Bullen repossessed himself of the personal property transferred by said assignment in trust but permitted said assignment to remain in full force and effect for the purpose of transferring the real estate therein described to said trust company and that afterwards to-wit: on the 22nd day of May 1907 the said George Bullen executed a further assignment in trust to said Northern Trust Company again transferring certain personal property and the real estate which had been omitted in the first transfer," and to the whole and each and every part thereof, for the reason that said finding is contrary to the law and the evidence taken upon said trial.

2.

Said above named parties and each of them hereby except to that part of the tenth finding of fact herein which reads as follows:—"That the securities assigned were at all times herein mention- kept in the vaine of the Northern Trust Company in Chicago in the State of Illinois either by said decedent in a safety deposit box or by the said Northern Trust Company as his agent or under
200 said trust agreement." and to the whole and each and every part thereof, for the reason that said finding is contrary to the law and the evidence taken upon said trial.

3.

Said above named parties and each of them hereby except to the first conclusion of law which reads as follows:—"That the decedent George Bullen by a trust agreement dated the 11th day of December 1902 and afterwards by a further trust agreement dated May 22nd 1907, conveyed his securities and personal property theretofore kept in a safety deposit box in the value of the Northern Trust Company in trust to the Northern Trust Company in contemplation of death and by conveyances intended to take effect and which did

take effect at his death and that the net value of the securities so transferred is subject to the inheritance tax imposed by the laws of the State of Wisconsin" for the reason that the same is based upon erroneous findings and is contrary to law.

4.

Said above named parties and each of them hereby except to the fourth conclusion of law which reads as follows:—"That the amount of the inheritance tax paid to the Treasurer of Cook County Illinois should not be deducted from the value of the securities held by the Northern Trust Company before the inheritance tax imposed on said property by the laws of this state is determined" for the reason that the same is based upon erroneous findings and is contrary to law.

5.

Said above named parties and each of them hereby except to the fifth conclusion of law which reads as follows:—

"That in computing the inheritance tax on the several interests in said estate which are taxable the exemptions given the several beneficiaries should be deducted from the first Twenty Five Thousand Dollars in value of the shares they receive respectively," for the reason that the same is based on erroneous findings and is contrary to law.

6.

Said above named parties and each of them hereby except to the sixth conclusion of law which reads as follows:—

"That the inheritance tax should be computed on the per-
201 sonal property of the decedent wherever located but only upon the real estate in Wisconsin, and upon the securities transferred to the Northern Trust Company on the portions that each heir or beneficiary receive under said trust agreement, but, as the said Northern Trust Company did not take possession of the real estate or personal property of the decedent located in the State of Wisconsin or attempt to administer it as a part of the trust, the tax on that portion of the estate or on the interest of the several heirs thereto should be estimated as though it passed by the intestate laws of the State of Wisconsin," for the reason that the same is based upon erroneous findings and is contrary to law.

7.

Said above named parties and each of them hereby except to the last conclusion of law which reads as follows:—

"That the names, relationships of decedent of the several heirs and beneficiaries, the value of the estate each receives, exemptions, rate of taxation and tax which should be imposed are as follows:—

Name.	Relationship.	Value of estate received.	Exemption.	Rate.	Tax.
Mary Lenore Bullen	Widow.	$228,791.76	$10,000	1½ 1½ 2 2½	$4,744.87
George Bullen	Son.	187,745.37	2,000	1 1½ 2 2½	3,798.63
Richard Nixon Bullen	Son.	187,745.37	2,000	1 1½ 2 2½	3,798.63
William Graham Bullen	Son.	187,745.37	2,000	1 1½ 2 2½	3,798.63
John Nixon Bullen	Son.	187,745.37	2,000	1 1½ 2 2½	3,798.63
Lucy E. Cleghorn	Niece.	11,228.50	500	1½%	160.93
Annie Graham	Sister.	6,126.25	500	1½%	84.39
				Total tax	$20,184.71

Let Judgment be entered accordingly, with costs.
202 Dated March 9th, 1910."

excepting to the above and each and every part thereof for the reason that the same is based on erroneous findings and is contrary to law.

RITSHER, MONTGOMERY,
HART & ABBOTT,
FRAME & BLACKSTONE,
Att'ys for Mary Lenore Bullen and George Bullen, Jr.
C. W. NEWBURY,
As Guardian ad Litem for Richard Nixon Bullen, William Graham Bullen, and John Nixon Bullen, Minors.

203–215 [Endorsed:] Original. State of Wisconsin. Circuit Court Waukesha County. In the Matter of Estate of George Bullen, Dec. Exceptions to findings. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis. Filed in Circuit Court Mar. 10, 1910. Waukesha County, Wis. E. M. Webb, Clerk. Filed Mar. 30, 1910. Clarence Kellogg, Clerk of Supreme Court, Wis.

* * * * * * *

216 Be it remembered that at a term of the Supreme Court of the State of Wisconsin, begun and held at the Capitol, in Madison, the seat of government of said State, on the second Tuesday, to-wit, on the ninth day of August, A. D. 1910, on the fifteenth day of the term, to-wit, on the 25th day of October, A. D. 1910.

[STATE SEAL.]

Present: John B. Winslow, Chief Justice; R. D. Marshall, Robert G. Siebecker, James C. Kerwin, William H. Timlin, John Barnes, and Aad J. Vinje, Justices of said Court.

The following proceedings were had inter alia, to-wit:

In re Estate of GEORGE BULLEN, Deceased; MARY LENORE BULLEN & George Bullen, Jr., & Richard Nixon Bullen & William Graham Bullen & John Nixon Bullen, Minors, by C. W. Newbury, Guardian ad Litem, Respondents,

vs.

THE STATE OF WISCONSIN and T. W. HAIGHT, Public Administrator, Appellants.

Appeal from Circuit Court Waukesha County, State of Wisconsin.

This cause came on to be heard on appeal from the judgment of the circuit court of Waukesha county and was argued by counsel. On consideration whereof; it is now here ordered and adjudged by this court, that the judgment of the circuit court of Waukesha county, in this cause, be and the same is hereby affirmed, with costs against the said appellants, taxed at the sum of — dollars.

STATE OF WISCONSIN,
Supreme Court, ss:

[Supreme Court of Wisconsin Seal.]

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the Court in the above entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Madison, this 1st day of December, A. D. 1910.

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

[Endorsed:] State of Wisconsin. Supreme Court. In re Estate of George Bullen, Mary Lenore Bullen et al., Respondents, against State of Wisconsin et al., Appellants. Remittitur. Filed in Circuit Court Dec. 2, 1910, Waukesha County, Wis. E. M. Webb, Clerk.

217 Be it remembered that at a term of the Supreme Court of the State of Wisconsin, begun and held at the Capitol, in Madison, the seat of government of said State, on the second Tuesday, to-wit, on the ninth day of August, A. D. 1910, on the fifteenth day of the term, to-wit, on the 25th day of October, A. D. 1910.

[STATE SEAL.]

Present: John B. Winslow, Chief Justice; R. D. Marshall, Robert G. Siebecker, James C. Kerwin, William H. Timlin, John Barnes, and Aad J. Vinje, Justices of said Court.

The following proceedings were had inter alia, to-wit:

In re Estate of GEORGE BULLEN, Deceased; MARY LENORE BULLEN & George Bullen, Jr., & Richard Nixon Bullen & William Graham Bullen & John Nixon Bullen, Minors, by C. W. Newbury, Guardian ad Litem, Appellants,

vs.

THE STATE OF WISCONSIN and T. W. HAIGHT, Public Administrator, Respondents.

Appeal from Circuit Court Waukesha County, State of Wisconsin.

This cause came on to be heard on appeal from the judgment of the circuit court of Waukesha county and was argued by counsel. On consideration whereof; it is now here ordered and adjudged by this court, that the judgment of the circuit court of Waukesha county, in this cause, be and the same is hereby affirmed, with costs against the said appellants, taxed at the sum of — dollars.

STATE OF WISCONSIN,
Supreme Court, ss:

[Supreme Court of Wisconsin Seal.]

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original order and judgment of the Court in the above entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Madison, this 1st day of December, A. D. 1910.

CLARENCE KELLOGG,
Clerk of the Supreme Court of the State of Wisconsin.

[Endorsed:] State of Wisconsin. Supreme Court. In re Estate of George Bullen, Deceased. Mary Lenore Bullen et al., Appellants, against State of Wisconsin et al., Respondents. Remittitur. Filed in Circuit Court Dec. 2, 1910, Waukesha County, Wis. E. M. Webb, Clerk. Recorded in Vol. 22, Page 446.

218 STATE OF WISCONSIN:

In Circuit Court, Waukesha County.

Filed in Circuit Court Mar. 6, 1911. Waukesha County, Wis. E. M. Webb, Clerk.

In the Matter of the Estate of GEORGE BULLEN, Deceased: MARY LENORE BULLEN et al., Appellants,

vs.

THE STATE OF WISCONSIN and T. W. HAIGHT, as Public Administrator and Special Administrator, etc., Respondents.

Appeal having been taken from the judgment of this Court upon the above entitled proceeding, filed March 9, 1910, to the Supreme Court of the State of Wisconsin, which said judgment has been there duly affirmed and the record remitted to this Court, on motion of T. W. Haight, Public Adm'r of Waukesha County, Wisconsin, and Special Administrator of the Estate of George Bullen above named for the purpose of fixing the inheritance tax thereon, it is

Ordered that the record and all papers in said proceeding be forthwith remitted to the County Court of Waukesha County, Wisconsin, in which court the matter originated, for further proceedings according to law.

Dated March 4, 1911.

By the Court.

MARTIN L. LUECK, *Judge*.

* * * * * * *

219 & 220 [Endorsed:] Circuit Court Waukesha County. In the Matter of the Estate of George Bullen, deceased and Mary Lenore Bullen and Others, Appellants, vs. The State of Wisconsin and T. W. Haight, as Public Adm'r, etc., Respondents. T. W. Haight, of Respondents. P. O. Address, Waukesha, Waukesha Co., Wis. Order for Remission of Case to the County Court of said Waukesha County. Filed in Circuit Court Mar. 6, 1911. Waukesha County, Wis., E. M. Webb, Clerk. Recorded in Vol. 22, Page 192.

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221 In Supreme Court, State of Wisconsin.

No. 44.

In re Estate of GEORGE BULLEN, Deceased: MARY LENORE BULLEN et al., Appellants,

v.

STATE OF WISCONSIN et al., Respondents.

The Circuit Court for Waukesha County fixed an inheritance tax upon the Estate of George Bullen, deceased, at $20,184.71. The Bullen heirs and the State appealed, which appeals were heard together. It appears from the established facts that George Bullen, a

citizen of Wisconsin, died at his home near Oconomowoc September 10, 1908, aged sixty-two years. He left a widow and four sons, three of whom are minors; at the time of his death he had on deposit in checking accounts in Chicago banks, $12,109.77 and was possessed of his home known as "Minnewoc" in Waukesha County, valued at $50,000 and the chattels appurtenant thereto, agreed to be worth $20,000. The remaining property in which Mr. Bullen had any interest prior to his death, consisted of certain stocks, bonds, notes, life insurance policies, etc., the title to which was vested in The Northern Trust Company, an Illinois corporation, as Trustee, for the benefit of Mrs. Bullen and her four sons, who now
222 appeal, and of Lucy E. Cleghorn, Annie Graham, Mary T. Harris, Victoria Bullen and Helen Mary Harris, all non-resident aliens. They did not, nor did The Northern Trust Company, appear in either of the courts below, or join in this appeal. No personal service was ever had on any of them. The Illinois property held by The Northern Trust Company, exclusive of the $25,000 insurance policy, was valued at $936,761.70. In 1892 Mr. Bullen who formerly lived in Chicago, moved to Oconomowoc, but continued to transact some business in Chicago down to the time of his death. In 1900 he began negotiations with The Northern Trust Company, with a view of transferring his property to it under a trust agreement. Various drafts of the instrument were made and discussed by the parties, down to December 11, 1902, when an agreement denominated "an assignment in trust" was entered into in Chicago, and the bonds, stocks, notes, insurance policies and other securities therein mentioned, were delivered to the Trust Company. The transfer of the securities was made on the date last mentioned, by the delivery to The Northern Trust Company of the assignment in trust, together with the securities themselves; such of the securities as did not pass by delivery, were also assigned by independent instruments, such as the usual endorsement on a stock certificate, and the usual form of assignment of insurance policy. The trust assignment was dated December 11, 1902, and the receipt of The Northern Trust Company appended to it bears the same date. A certificate of acknowledgment, however, was made afterwards on April 4, 1903. These securities had always been in a safety deposit box in Chicago and the legal title to them was held by the Trustee at the time of Mr. Bullen's death, and the securities them-
223 selves had never been within the State of Wisconsin. The assignment in trust provided for the investment and reinvestment of the trust estate, and directed the payment of $900 per annum to Lucy E. Cleghorn, a niece, and $900 per annum to Annie Graham, a sister, both of whom resided out of the United States at the time of Mr. Bullen's death. It directed the trustees to pay the cost of maintenance of a house in London, Canada, during the lives of Mr. Bullen's two sisters, Mary T. Harris and Victoria Bullen, and his niece Helen Mary Harris; it directed the trustee to hold his house and farm, known as "Minnewoc" and the chattels appurtenant thereto, and to spend the necessary amount in maintaining them, for the benefit of Mrs. Bullen and the children; it gave to Mrs.

Bullen for life one-third of the remainder of the income from the trust estate, and directed that the other two-thirds should be paid to Mr. Bullen during his lifetime, and after his death should be set apart for his four sons, and it directed the distribution of the principal to the sons, each to have one-third of his share when he should reach the age of twenty-five years, and the other two-thirds when he should reach the age of thirty years; it reserved the right to direct and control the distribution of the trust property, and to revoke and vacate the trust at any time during Mr. Bullen's lifetime. Mr. Bullen, having technically repossessed himself of the securities for a brief period, executed a further assignment in trust, dated May 22, 1907, but the manual possession of the securities had remained at all times since 1902 with The Northern Trust Company, Mr. Bullen having repossessed himself of them merely by directing the Trust Company to hold them for him as his
224 agent instead of trustee. Prior to the death of George Bullen, The Northern Trust Company made returns to the tax assessors of Cook County, Illinois, of the value of the trust estate, and paid the taxes thereon levied on the valuation made by said assessors. The Trust Company also paid after Mr. Bullen's death an inheritance tax on all of said property in Illinois, including the bank deposits. When the assignment in trust was drawn, Mr. Bullen was suffering from locomotor ataxia, and was aware of the fact. Mrs. Bullen was also in ill health; and the fourteenth paragraph of the trust assignment declares the intention of giving the trustee "full power and authority to manage the said trust estate for the benefit of the several beneficiaries thereof, particularly my said wife during her lifetime in the event she should be unable, at any time prior to my death, to give my affairs such attention as they may demand, and at all events, after my death, in like manner as I myself might or could manage it, if living and in good health." The sixteenth paragraph provides for the distribution of any trust estate not specifically disposed of, "among my heirs at law, as provided by the laws of Illinois, with reference to intestate property, and the laws of said state shall govern in the interpretation of this instrument." In addition to the personal property which passed under the assignment in trust, there was certain real estate, one parcel of which "Minnewoc," Mr. Bullen's residence, is located in Wisconsin. Mrs. Bullen declined to sign the deeds of the real estate, refusing to relinquish her dower and other rights therein, unless Mr. Bullen should make
225 some provision in the trust assignment for an income for her mother. Mrs. Bullen refused at first to assign the insurance policy for $25,000 and the policy being payable to her could not be transferred without her consent; she finally reached an agreement as to this policy with Mr. Bullen and executed the assignment of it; the deeds having never been assigned, the deed of "Minnewoc" to the trustee did not pass the homestead rights. The Northern Trust Company having no right to do business in Wisconsin has confined itself to the trust estate delivered to it in Illinois, and has avoided coming within the jurisdiction of this court. The only interested parties over whose persons the court has jurisdiction are Mary Lenore

Bullen, and her four sons, the three minors appearing through Mr. Newbury, their guardian ad litem.

226 KERWIN, *J.*:

We shall first consider the appeal on the part of the Bullen heirs. Counsel say in their brief that there is but one question for determination by this court namely, "Can the State of Wisconsin tax a contract made by one of its residents when in a foreign state, whereby he transfers property which is then in the foreign state, and which never has been in the State of Wisconsin, even though constructively the transfer was 'intended to take effect in possession or enjoyment at or after the death of the transferror?' " It is argued that the tax is not a tax of property, but an excise tax imposed on the transfer, and the transfer being made in a foreign state of property within that state, this state can not tax such property held by The Northern Trust Company. It is said that the tax is "not a tax on the person who transmits, or the person who receives, but it is a tax on the right of transmission." This question was considered and discussed by this court in Nunnemacher v. State, 129 Wis., 190, and the conclusion arrived at after a review of the authorities that inheritance taxes are not taxes upon property "but upon the right to receive property." And in Beals v. State, 139, Wis., at p. 552, this court, referring to the Nunnemacher case, said: "Inheritance taxation was held to be constitutional in the Nunnemacher case on the ground that it is excise taxation levied on the transfer of property, and not the property itself. * * *" And in summing up the points decided the court said: "The inheritance tax levied by Ch. 14, Laws of 1903, is not a tax upon property, or property rights, in any sense, but purely an excise tax, levied upon the 'transfer' or transaction,
and merely measured in amount by the amount of the prop-
227 erty transferred. Again in State v. Pabst, 139 Wis., 561, the rule laid down in the Nunnemacher and Beals cases was referred to and approved. The tax, therefore, under the decision of this and other courts is a tax upon the transfer transaction or right to receive property. Nunnemacher v. State, supra, Beals v. State, supra. The theory of an inheritance tax is that it is not one on property, but upon the right of succession. 27 Am. & Eng. Ency. of Law (2nd Ed.) p. 338; State v. Pabst, supra. But it is strenuously argued by counsel for the heirs that the property taxed being in the State of Illinois and the transfer from Bullen to The Northern Trust Company having been made in the State of Illinois and outside of the State of Wisconsin, the Wisconsin inheritance tax law does not reach such property. This contention involves the situs of the property of Bullen transferred to the Trust Company, and the application of our inheritance law to such situation. The following provisions of the inheritance law of this state, Sec. 1087-1, Vol. 3 Stats, are pertinent to the present inquiry:

"A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, or income therefrom in trust or otherwise, to any person, association or corporation,

except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state in the following cases:

228 1. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.

2. When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

3. When the transfer is of property made by a resident or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.

4. Such tax shall be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof, by any such transfer whether made before or after the passage of this act: provided, that property or estates which have vested in such persons or corporations before this act shall take effect, shall not be subject to a tax; and provided further that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxed."

This statute was borrowed from New York, therefore, the judicial construction given it there is significant in interpreting it here. Draper et al. v. Emerson, 22 Wis. 148; Westcott et al. v. Miller, 42 Wis. 454; Dutcher v. Dutcher, 39 Wis. 651; Pomeroy v. Pomeroy et al., 93 Wis. 262. "It is a settled rule in the construction of statutes, that where a statute has received a judicial construction in another state, and is then adopted, it is taken with the con-
229 struction which has been so given it." Draper v. Emerson, supra. Prior to its adoption here the statute received judicial construction in New York and it was held that in respect to personal property not within the state at the time of the resident decedent's death the court will apply the maxim Mobilia sequuntur personam. Matter of Est. of James T. Swift, 137 N. Y. 77; In re estate of Charles W. Cornell, 170 N. Y. 423. The effect of this rule is to make the legal situs of the property at the domicil of the decedent. As we have seen Mr. Bullen reserved the right to direct and control the distribution of the trust property and to revoke the trust at any time during his life, and received during his lifetime the entire net income from the trust estate held by The Northern Trust Company. The trust agreement contains the following clause:

"Fifth. I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof,

and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and, at all events, after my death, the same income and the said principal shall be applied, paid over or held as herein provided."

We think under the authorities and the established facts in this case that the situs of the property covered by the trust agreement was in the State of Wisconsin where Bullen lived and died, and was subject to the Wisconsin inheritance tax. Matter of Est. of
230 James T. Swift, supra; Matter of Estate of Charles W. Cornell, supra. In re Corning's Est., 23 N. Y. S. 285; Frothingham v. Shaw, 175 Mass. 59; Ford v. Ford 70 Wis. 19. It is true there is some conflict of authority on the point. Counsel for the heirs in their brief cite us to In re Joslyn's Est. 76 Vt. 88, which appears to be out of harmony with the rule laid down in New York and Massachusetts. We feel constrained to hold to the New York and Massachusetts rule. In Frothingham v. Shaw, 175 Mass. 59, the court holds the general rule to be that personal property for the purpose of taxation has its situs at the domicil of the owner, and although this rule leads to double taxation, that has not been accounted a sufficient objection to taxation of personal property to the owner during his life at the place of his domicil, nor sufficient objection to the imposition of succession taxes after his death.

In Matter of the Est. of James T. Swift, supra, there is a full discussion of the subject and the court concludes that as to personal property of a resident decedent, wheresoever situated, whether within or without the state, it is subject to the tax imposed by the act.

In Matter of the Est. of Charles W. Cornell, supra, it was held that a gift of securities under an agreement that the donor should have during his life such part of the net income as he desired, but the donee to have possession and management of the securities makes the donee the holder in trust until the death of the donor and such property is, therefore, taxable under the laws of 1896, Ch. 908, sec. 220, subd. 3, which provides:
231 "When the transfer is of property made by a resident or by a non-resident, when such non-resident's property is within this state, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect, in possession or enjoyment, at or after such death. Such tax shall also be imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy, to any property or the income thereof by any such transfer, whether made before or after the passage of this act. * * * ."

See also Matter of the Est. of Brandeth, 169 N. Y. 437. In the estate of Keeney, 194 N. Y. 281, under the transfer tax law before referred to the court said p. 287:

"It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in

many cases the estate on the death of the grantor would pass free from tax to the same persons who would take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax.

"It is also urged that the trust property was at the time of the intestate's death in another state with the legal title in the trustee. This does not affect the liability of the transfer to taxation. The liability in this case accrued at the time of transfer, no matter when imposed."

232 In the instant case Bullen reserved and enjoyed a life estate in the property transferred to The Northern Trust Company. Sec. 2443 Stats. 1898 provides that the jurisdiction of the county court extends to estates of all persons deceased who were at the time of their deaths inhabitants of or residents of the same county, or who shall die without the state having any estate within such county to be administered. And by Ch. 44, Laws of 1903, (the inheritance tax law,) such courts are given authority to determine the inheritance tax which shall be paid by the estate of decedent, and in sec. 1087-24, Vol. 3 Stats. the words, "estate" and "property" are defined to mean "the real and personal property or interest therein of the testator, intestate, grantor, bargainor, vendor or donor passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, vendees or successors, and shall include all personal property within or without the state."

We think it quite clear upon the established facts that the transfer was made "in contemplation of death" within the meaning of the law. State v. Pabst, 139 Wis. 561. And was also intended to take effect in possession or enjoyment at or after such death." Subd. 3, sec. 1087-1; Matter of Est. of Green, 153 N. Y. 223; Matter of Brandeth, supra; Matter of Est. of Charles W. Cornell, 170 N. Y. 423, Matter of Keeney, 194 N. Y. 281. We conclude that the property covered by the trust agreement was subject to the inheritance tax.

233 The only error urged on the state's appeal is, that the $25,000 insurance policy assigned to The Trust Company should have been taxed. It appears that this policy was made payable to Mrs. Bullen as beneficiary and no right reserved in it or otherwise to change the beneficiary. It was assigned to the Trust Company, but it does not appear that Mrs. Bullen relinquished her rights therein, therefore, this property remained the property of Mrs. Bullen and was not a part of Mr. Bullen's estate; the court below, therefore, was right in refusing to tax it.

Some other points are made on both appeals, but from the view we take of the case consideration of them is unnecessary.

By the Court: The judgment of the court below is affirmed on both appeals.

234–240 STATE OF WISCONSIN:

Supreme Court.

I, Clarence Kellogg, Clerk of the Supreme Court of the State of Wisconsin, do hereby certify that I have compared the above and foregoing with the original opinion of the Court by Justice Kerwin, on file in my office in the above entitled cause, and that it is a correct transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Madison, the twenty-seventh day of August, A. D. 1912.

[Seal Supreme Court of Wisconsin.]

CLARENCE KELLOGG,
Clerk of the Supreme Court of Wisconsin.

[Endorsed:] State of Wisconsin Supreme Court. In re Estate of George Bullen, deceased. Mary Lenore Bullen, et al., Appellants, against State of Wisconsin et al., Respondents. Certified copy of opinion of the Court by Justice Kerwin.

* * * * * * *

241 STATE OF WISCONSIN:

County Court, Waukesha County.

In the Matter of the Estate of GEORGE BULLEN, Deceased, and of Determination of the Transfer Tax Therein.

Judgment.

At the Regular Term of said Court, Held at the Court House in the City of Waukesha, Wisconsin, on the 10th Day of April, 1911.

Present the Hon. David W. Agnew, County Judge, Presiding.

This action having been tried before this court at the December, 1909, term of said court, and the court having entered a judgment herein dated the 30th day of December, 1909, adjudging the amount of the transfer tax assessed against the beneficiaries in said estate, and which said judgment is now of record in said court; and part of the beneficiaries in said estate having appealed to the Circuit Court for Waukesha County, Wisconsin, from said judgment and the whole thereof, in which said court a new and different judgment was entered assessing said tax and fixing the amounts thereof against said beneficiaries as in said judgment set forth, and which is now on file herein, and an appeal having been taken from said judgment to the Supreme Court of the State of Wisconsin, which said judgment was by said Supreme Court duly affirmed on the 25th day of October, 1910; and the record having been duly remitted from said Supreme

Court to the said Circuit Court for Waukesha County, Wisconsin, and from said Circuit Court duly remitted to the above named County Court for further proceedings according to law, and being now on file therein, and due notice of the remittance of such record having been given, and notice of application for entry of judgment in ac-
242 cordance with the directions and judgment of the Circuit Court having been waived; and the judgment of said Circuit Court, based on findings made by said Court being now herein duly referred to and made a part hereof, and reciting the basis for this judgment, and the court having concluded as matters of law as follows:

1. That the said decedent, George Bullen, by a trust agreement dated the 11th day of December, 1902, and afterwards by a further trust agreement dated May 22, 1907, conveyed his securities and personal property theretofore kept in a safety deposit box in the vault of The Northern Trust Company and herein designated, in trust to The Northern Trust Company in contemplation of death and by conveyances intended to take effect and which did take effect at his death, and that the net value of the securities so transferred is subject to the inheritance tax imposed by the laws of the State of Wisconsin.

2. That said property so conveyed was at the time of the death of said George Bullen of the clear market value of $936,761.70; that said decedent at the time of his death had on deposit in banks in Chicago, Illinois, the sum of $12,109.77 which was not conveyed to said Northern Trust Company by said conveyance; that said decedent at the time of his death owned real estate in Wisconsin which was of the clear market value of $56,000.00 and that he owned personal property on and about said premises of the clear market value of $20,000. Total, $1,024,871.47. That there should be deducted from the amount of the property so conveyed in trust to The Northern Trust Company the following sums:

Charges of the Trust Company for prior services	$10,000.
Property taxes paid by Trust Company, which were due at decedent's death	4,775.69
Debts of the decedent	5,960.37
For attorney's fees	5,000.00
	$25,736.06

243 3. That said Northern Trust Company among other securities held a policy of $25,000 on the life of said George Bullen, which when executed was payable to Mary Lenore Bullen, but which she afterwards at the request of said George Bullen assigned to The Northern Trust Company to be held among other securities conveyed by the trust agreement dated December 11, 1902, and that neither said insurance policy nor the proceeds thereof is subject to an inheritance tax.

4. That the amount of the inheritance tax paid to the Treasurer of Cook County, Illinois, should not be deducted from the value of

the securities held by The Northern Trust Company before the inheritance tax imposed on said property by the laws of this State is determined.

5. That in computing the inheritance tax on the several interests in said estate which are taxable the exemptions given the several beneficiaries should be deducted from the first $25,000 in value of the share they receive respectively.

6. That the inheritance tax should be computed on the personal property of the decedent wherever located but only upon the real estate in Wisconsin, and upon securities transferred to The Northern Trust Company on the portions that each heir or beneficiary receive under said trust agreement, but, as the said Northern Trust Company did not take possession of the real estate or personal property of the decedent located in the State of Wisconsin or attempt to administer it as a part of the trust the tax on that portion of the estate or on the interests of the several beneficiaries thereto should be estimated as though it passed by the intestate laws of the State of Wisconsin.

7. That the names, relationship to decedent of the several heirs and beneficiaries, the value of the estate each receives, exemptions rate of taxation and tax which should be imposed are as follows:

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Name.	Relationship.	Value of estate received.	Exemption.	Rate.	Tax.
Mary Lenore Bullen	Widow.	$228,794.76	$10,000	1 % 1½% 2 % 2½%	$4,744.87
George Bullen	Son.	187,745.37	2,000	1 % 1½% 2 % 2½%	3,798.63
Richard Nixon Bullen	Son.	187,745.37	2,000	1 % 1½% 2 % 2½%	3,798.63
William Graham Bullen	Son.	187,745.37	2,000	1 % 1½% 2 % 2½%	3,798.63
John Nixon Bullen	Son.	187,745.37	2,000	1 % 1½% 2 % 2½%	3,798.63
Lucy E. Cleghorn	Niece.	11,228.90	500	1½%	160.93
Annie Graham	Sister.	6,126.25	500	1½%	84.39
				Total tax	$20,184.71

245 And the Court having ordered judgment in accordance with the said findings and conclusions of law,

On Motion of T. W. Haight, Esq., Public Administrator of Waukesha County, Wisconsin and Special Administrator in said George Bullen estate,

It is ordered and adjudged that the State of Wisconsin do have

and recover of and from the heirs and beneficiaries of said estate, as follows: Of Mary Lenore Bullen, widow of said deceased, the sum of $4,744.87; of George Bullen, son of deceased, the sum of $3,798.63; of Richard Nixon Bullen, son of deceased, the sum of $3,798.63; of William Graham Bullen, son of deceased, the sum of $3,798.63; of John Nixon Bullen, son of deceased, the sum of $3,798.63; of Lucy E. Cleghorn, niece of said deceased, the sum of $160.93; of Annie Graham, a sister of said deceased, the sum of $84.39.

And it Further Appearing that the final account of T. W. Haight has been filed, and examined, in which he reports the collection of said tax and that no further necessity for his appointment in said matter exists, and praying that said final account be examined and allowed and he be discharged according to law,

It is further ordered and adjudged that the account of said T. W. Haight, as Public Administrator of Waukesha County, Wisconsin and Special Administrator of said estate of George Bullen as stated be and the same is hereby allowed.

And it further appearing that said tax has been paid and received by the State of Wisconsin, it is further ordered, adjudged and decreed the said estate be and the same is hereby settled, so far as the assessment and payment of transfer tax is concerned, and so far as necessary in this proceeding; and that the said T. W. Haight be released and discharged from all further liability upon said estate and
246 his bond as such special administrator herein be and stand cancelled from the time of his filing in this court proper vouchers showing collection and payment of said tax in accordance with this judgment, and the amounts allowed as per the final account of said Public Administrator.

Dated November 18th, 1912.

By the Court:

DAVID W. AGNEW,
County Judge.

247 & 248 [Endorsed:] State of Wisconsin. County Court. Waukesha County. In re Estate of Geo. Bullen, Dec. Final Judgment. Frame & Blackstone, Waukesha National Bank Building, Waukesha, Wis., Attorneys for —— ——. Filed Nov. 18, 1912. David W. Agnew, County Judge. Recorded in Vol. 73, Page 475.

249 In the Supreme Court of the United States.

MARY LENORE BULLEN, GEORGE BULLEN, JR., and RICHARD NIXON BULLEN, and also William Graham Bullen and John Nixon Bullen, Minors, by Mary Lenore Bullen, Their Next Friend, Plaintiffs in Error,

vs.

THE STATE OF WISCONSIN, Defendant in Error.

Statement of Errors Relied on and Parts of Record to Be Printed.

The plaintiffs in error intend to rely upon all of the errors set forth in their Assignment of Errors, and designate the following parts of the record as those which they think necessary for consideration thereof:

1. Petition for Writ of Error.
2. Prayer for Reversal.
3. Assignment of Errors.
4. Petition of Public Administrator for Administration for Purpose of Adjustment of Inheritance Tax.
5. Order for Hearing Petition for Administration for Adjustment of Inheritance Tax, etc.
6. Answer of Mary Lenore Bullen, et al.
7. Findings of Fact and Law in Matter of Determination of Transfer Tax.
8. Order and Judgment Valuing Estate and Determining Transfer Tax.
9. Exceptions to Findings.
10. Objections of Appellants to Tax.
11. Findings of Fact and Conclusions of Law.

250 12. Judgment.

13. Stipulation.
14. Testimony of John R. Montgomery taken on December 1st, 1909.
15. Stipulation.
16. Appellants' Proposed Findings.
17. Exceptions to Refusal of Court to Find as Requested.
18. Exceptions to Findings.
19. Remittitur.
20. Order for Remission of Case to the County Court of said Waukesha County.
21. Opinion of the Supreme Court of Wisconsin.
22. Final Judgment of the County Court of Waukesha County.

JNO. R. MONTGOMERY,
Attorney for Plaintiffs in Error,
959 *The Rookery, Chicago.*

Service of the above and foregoing document accepted this 20th day of October, 1914.

W. C. OWEN,
WALTER DREW,
Attorneys for Defendant in Error.

251 [Endorsed:] 658/24402. No. 658. Supreme Court of the United States. Mary Lenore Bullen, George Bullen, Jr., and Richard Nixon Bullen, and also William Graham Bullen and John Nixon Bullen, Minors, by Mary Lenore Bullen, their next Friend, Plaintiffs in Error, vs. The State of Wisconsin, Defendant in Error. Statement of Errors Relied on and Parts of Record to be Printed. Montgomery, Hart, Smith & Steere, Attorneys at Law, 959 The Rookery, Chicago.

252 [Endorsed:] File No. 24,402. Supreme Court U. S. October term, 1914. Term No. 658. Mary Lenore Bullen et al., Pl'ffs in Error, vs. The State of Wisconsin. Statement of errors to be rerelied upon and designation by plaintiffs in error of parts of record to be printed, and proof of service of same. Filed October 27, 1914. *191*

[Endorsed:] In the Supreme Court of the United States. Mary Lenore Bullen, George Bullen, Jr., and Richard Nixon Bullen, and also William Graham Bullen and John Nixon Bullen, their next friend, Plaintiffs in Error, vs. The State of Wisconsin, Defendant in Error. Writ of Error, Copy of Bond, etc., Petition for Writ of Error, Prayer for Reversal, Assignment of Errors, Citation with Acceptance of Service and Appearance, Præcipe for Transcript of Record, Transcript of Record.

Endorsed on cover: File No. 24,402. Wisconsin, Waukesha County County Court. Term No. 262. Mary Lenore Bullen, George Bullen, Jr., Richard Nixon Bullen, William Graham Bullen, and John Nixon Bullen, plaintiffs in error, vs. The State of Wisconsin. Filed October 19th, 1914. File No. 24,402.

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No. 24402.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 262.

MARY LENORE BULLEN, GEORGE BULLEN, JR., RICHARD NIXON BULLEN, WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN,
Plaintiffs in Error,
vs.
THE STATE OF WISCONSIN,
Defendant in Error.

Error to the County Court of Waukesha County, Wisconsin.

Brief and Argument for Plaintiffs in Error.

JOHN R. MONTGOMERY,
LOUIS E. HART,
JASPERSEN SMITH,
LLOYD R. STEERE,
FOR PLAINTIFFS IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1915.

No. 262.

MARY LENORE BULLEN, GEORGE BULLEN, Jr., RICHARD NIXON BULLEN, WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN,
Plaintiffs in Error.
vs
THE STATE OF WISCONSIN,
Defendant in Error.
} Error to the County Court of Waukesha County, Wisconsin.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

Plaintiffs in error seek to have reviewed a final judgment of the County Court of Waukesha County, Wisconsin, fixing an inheritance tax in the estate of George Bullen at $20,184.71. This judgment was entered pursuant to the mandate of the Supreme Court of Wisconsin, the highest court of that state in which a decision could be had. At the commencement of the proceedings in 1909, objections were made in the County Court that to levy this tax would violate the rights of the plaintiffs in error under the federal constitution and the fifth and fourteenth amendments thereof. These constitutional questions were fully

argued there and, on successive appeals, before the Circuit Court of Waukesha County and the Supreme Court of Wisconsin.

To avoid penalties the tax was paid pending appeal but, in the event of a reversal here, the plaintiffs in error will be entitled, under the Wisconsin statute, to have refunded the amount they have paid.

The facts were brought into the record mainly by stipulation. (P. R., 49-75.)

STATEMENT OF THE CASE.

1. The property involved in the transaction and the items of the tax.

George Bullen, a citizen of Wisconsin, died at his home in Waukesha County September 10, 1908, leaving a widow and four sons, who are plaintiffs in error. The Wisconsin inheritance tax was levied upon the following property:

(1.) Mr. Bullen's homestead and appurtenant chattels in Waukesha County, Wisconsin, conceded to be taxable in Wisconsin, valued at $76,000.

(2.) Bank deposits in Chicago banks, $12,109.77, also conceded to be subject to Wisconsin inheritance tax, although previously subjected to an inheritance tax in Illinois.

(3.) Certain stocks, bonds, notes, life insurance policies, etc., valued at $936,761.71, the legal title to which was vested in The Northern Trust Company, an Illinois corporation, and which were held by it in Chicago and had previously been subjected to an inheritance tax in Illinois. The right to levy the Wisconsin tax on this property is disputed.

Mrs. Bullen's share in all three items was taxed $4,744.87 and each son's share $3,798.63. The shares of two annuitants, Mrs. Cleghorn and Mrs. Graham, both non-resident aliens, were taxed $160.93 and $84.39 respectively. (P. R., 108.) The Wisconsin courts acquired no jurisdiction of the persons of these annuitants and they are not parties to this writ of error. (P. R., 99.)

2. The circumstances of the transaction.

Mr. Bullen formerly lived in Chicago. In 1892 he moved to Oconomowoc, Wisconsin, and established his residence there, but continued to transact some business in Chicago down to the time of his death. He always kept his securities in a safety deposit box in Chicago. The securities themselves were never taken within the State of Wisconsin. (P. R., 99.)

Eight years before his death Mr. Bullen, then in ill health, began negotiations with The Northern Trust Company with a view to transferring his property to it under a trust agreement. Various drafts of the instrument were made and discussed by the parties from 1900 to December, 1902. There was no purpose on Mr. Bullen's part to avoid a Wisconsin inheritance tax by means of the proposed transfer. There was at that time no inheritance tax law in force in Wisconsin, the former law having been held unconstitutional. (*Black* v. *State*, 113 Wis. 205.) The law under which this proceeding was brought went into force March 31, 1903. (Laws of Wisconsin, 1903, Chap. 44, p. 65.)

3. The consideration for the transaction.

Mrs. Bullen, one of the plaintiffs in error, was also a party to the negotiations with reference to the establishment of the trust. She declined to sign the deeds with her husband, refusing to relinquish her dower and other rights, unless Mr. Bullen would make some provision in the trust agreement for an income for her mother. She also refused at first to assign a $25,000 policy of the New York Life Insurance Company on his life, payable to her. (P. R., 53-54.) The policy contained no provision authorizing a change of beneficiaries. (P. R., 55.) This delayed the conclusion of the arrangement. (P. R., 52.) She finally reached an agreement with Mr. Bullen and assigned the insurance policy. The deeds she never executed. (P. R., 53-54.) The transaction, therefore, was based on a substantial consideration moving from her and was not a gift.

4. The assignment in trust.

On December 11, 1902, the year before the enactment of the inheritance tax law under which the judgment below was rendered, Mr. Bullen executed in Chicago, an agreement of that date with The Northern Trust Company denominated an "assignment in trust" (P. R. 56-58), transferring to it the stocks, bonds, notes, life insurance policies and other like securities valued in the Wisconsin inheritance tax proceedings at $936,761.71, and the chattels appurtenant to his home in Waukesha County. The agreement included real estate not here in question. (For personal property list see P. R. 64, Schedule A; for real property list, P. R., 66, Schedule B.) The chattels appurtenant to the homestead remained in Mr. Bul-

len's possession, but he delivered the securities to the Trust Company. Down to that date he had always kept them in a safe deposit box in Chicago. (P. R., 52.)

5. The terms of the trust.

This assignment in trust provided for the investment and reinvestment of the trust estate and directed the trustee after paying certain annuities to sisters and nieces of Mr. Bullen, to maintain the homestead and appurtenant chattels for the benefit of the plaintiffs in error. It gave to Mrs. Bullen for life, one-third of the remainder of the income from the trust estate and directed that the other two-thirds should be paid to Mr. Bullen, during his lifetime and, after his death should be set apart for his four sons and it directed the distribution of the principal to the sons, each to have one-third of his share when he should reach the age of 25 years and, except on certain contingencies, the other two-thirds when he should reach the age of 30 years. It reserved the right to direct and control the distribution of the trust property, and to revoke and vacate the trust at any time during Mr. Bullen's lifetime. (P. R., 56.)

After the delivery of the securities in 1902 The Northern Trust Company returned certain of them to Mr. Bullen to exchange or hold. That is to say, the company as Mr. Bullen's trustee, returned them to itself as Mr. Bullen's agent. The sales or exchanges of securities were made for him by the Trust Company either as his agent, acting under his direction, or by it as trustee under the assignment in trust. The physical location of the bonds, notes, stock certificates, insurance policies, etc., except

those sold or otherwise disposed of, continued to be in Chicago at all times from December 11, 1902, down to the time of Mr. Bullen's death. (P. R. 53, 78.)

On May 22, 1907, in order again to place in full operation as to all the securities, the arrangement effected by the original assignment in trust, Mr. Bullen executed an instrument denominated a "further assignment in trust" reciting that the original assignment still remained in force and transferring to the trustee to be held thereunder, the securities constituting the trust estate at that time. (Schedule of Securities, P. R. 72-75.)

6. Further facts showing the assignment owed its efficacy to Illinois and not to Wisconsin law.

Prior to the death of Mr. Bullen in 1908, taxes had been levied on the personal property in the possession of The Northern Trust Company by the taxing authorities of Cook County, Illinois, and had been paid by the Trust Company. (P. R., 81.)

The assignment in trust directs that any of the trust estate not specifically disposed of be distributed among his heirs-at-law "as provided by the laws of Illinois with relation to intestate property." It proceeds, "and the laws of the said state shall govern in the interpretation of this instrument." (P. R., 62, sixteenth paragraph.)

Plaintiffs in error have always contended that the location of the property in Illinois and the express provision of the assignment in trust that the laws of Illinois should govern it (P. R., 62) constituted it a contract which passed the title at Mr. Bullen's

death by Illinois law only and not by the law of Wisconsin. (P. R., 55.)

7. The Illinois inheritance tax.

After Mr. Bullen's death, the Trust Company paid to the State of Illinois an inheritance tax of $8,569.51, assessed through a judgment of the County Court of Cook County upon all of the personal property held under the assignment in trust and upon the deposits which stood in the name of Mr. Bullen in Chicago banks. (P. R., 38, 55.) The Wisconsin courts made no deduction by reason of the payment of the Illinois tax, in determining the amount of the tax in Wisconsin. This was assigned as error.

8. The proceedings in Wisconsin and the questions under the federal constitution.

The Northern Trust Company having no right to do business in Wisconsin, never took possession of the homestead and chattels appurtenant thereto in Waukesha County and never appeared in this proceeding. The plaintiffs in error, however, have enjoyed the possession of the homestead and appurtenant chattels and the Wisconsin courts treated that property as passing to them by the intestate laws of Wisconsin. (P. R., 107, Par. 6.)

At the suggestion of Mrs. Bullen, the authorities of Waukesha County brought this proceeding, within a year after Mr. Bullen's death. (P. R., 55.) Mrs. Bullen and George Bullen, Jr., the eldest son, who was then of age, filed their answer (P. R. 12), in which they admitted that Mr. Bullen's homestead and chattels in Wisconsin and his money on deposit in Chicago banks, were subject to a Wisconsin in-

heritance tax, but denied that the property transferred to The Northern Trust Company was subject to any such tax and expressly averred that if the State of Wisconsin should collect a tax on the property transferred to The Northern Trust Company, it would thereby take the private property of the defendants for public use without just compensation and would deprive them of their property without due process of law and would deny to them the equal protection of laws and would also impair the obligation of the contract between George Bullen and The Northern Trust Company in violation of the constitution of the United States and of the fifth and fourteenth amendments thereof.

The County Court of Waukesha County found against the plaintiffs in error on this issue and fixed the total tax at $19,969.34. Plaintiffs in error filed exceptions (P. R., 26-30) urging the same points under the federal constitution. On hearing in the Circuit Court the judgment was fixed at $20,184.71 (P. R., 40), which is the amount of the final judgment. (P. R., 107.) Plaintiffs in error appealed to the Supreme Court, presenting the same federal questions. (P. R., 5, 82.) It affirmed the judgment of the Circuit Court and the record was remitted to the County Court, which entered final judgment conforming to the Circuit Court judgment, which had been affirmed by the Supreme Court. (P. R., 105.)

The statute under which the Wisconsin tax was levied appears in the record. (P. R., 101, 102.)

9. The decision of the Supreme Court of Wisconsin.

The Supreme Court in its opinion (143 Wis. 512, P. R., 101) held that it was bound by the decisions

of New York from which state Wisconsin had derived its inheritance tax statute. The court adopted from New York the maxim *mobilia sequuntur personam* and held that the effect of this rule was to fix the legal situs of the property at the domicile of the decedent and that, therefore, the property was subject to tax.

SPECIFICATION OF THE ERRORS RELIED UPON.

I.

The transfer taxed by Wisconsin became effective not under the laws of Wisconsin, but solely under laws of another jurisdiction and the tax violates the fifth and fourteenth amendments to the constitution of the United States.

The foregoing is the substance of the first and third assignments of error, which are as follows:

> "1. The County Court of Waukesha County, Wisconsin, erred in finding in its final judgment that the net value of the securities transferred by George Bullen through assignment in trust to the Northern Trust Company, was subject to the inheritance tax imposed by the laws of the State of Wisconsin, and erred in adjudging a tax against the net value of said securities for the reason that the beneficial interest in said securities passed at the death of George Bullen, to the plaintiffs in error, under and by virtue of the laws of Illinois, only, and not under or by virtue of the laws of Wisconsin." (P. R., 9).
>
> "3. The County Court of Waukesha County, Wisconsin, erred in entering its final judgment in so far as the same levied an inheritance tax upon the property held by the Northern Trust

Company for the benefit of the plaintiffs in error, or fixed a tax on the value of said property, for the reason that said property was beyond the jurisdiction of the State of Wisconsin, and the taking of the property of the plaintiffs in error for such tax, was a taking of their private property for public use, without just compensation, and deprived them of their property without due process of law, and denied them the equal protection of the laws." (P. R., 9.)

II.

The assignment in trust having been made upon an actual consideration was not a gift but a valid contract and the law taxing it impairs the obligation of the contract.

The fourth assignment of error covers this point and is as follows:

"4. The County Court of Waukesha County, Wisconsin, erred in entering its final judgment in so far as the same levied an inheritance tax upon property in Illinois in the possession of the Northern Trust Company, for the reason that said property was held by the Northern Trust Company under a valid contract made by George Bullen prior to the enactment of the Wisconsin inheritance tax law that the beneficial interest in said property should pass at his death to the plaintiffs in error under the laws of Illinois, and, therefore, the taking by the State of Wisconsin for an inheritance tax of any portion of the property so held, impaired the obligation of the said contract." (P. R., 9.)

III.

The levy of a tax by Wisconsin on the amount already paid as an inheritance tax in Illinois is erroneous because the amount so paid never passed to the plaintiffs in error. A tax upon this deprives them of their property without due process of law.

This is set forth in the second assignment of error, which is as follows:

> "2. The County Court of Waukesha County, Wisconsin, erred in finding in its final judgment that the amount of the inheritance tax paid by the estate of George Bullen to the treasurer of Cook County, Illinois, should not be deducted from the value of the securities held by the Northern Trust Company before the inheritance tax imposed on said property by the laws of Wisconsin, was determined." (P. R., 9.)

The fifth and sixth assignments of error merely specify the same errors as to the judgments of the Circuit Court of Waukesha County and the Supreme Court of Wisconsin.

BRIEF OF THE ARGUMENT.

I.

The transfer taxed by Wisconsin became effective not under the laws of Wisconsin, but solely under laws of another jurisdiction and the tax violates the fifth and fourteenth amendments to the constitution of the United States.

1. The nature of the inheritance tax.

The Supreme Court of Wisconsin has declared the inheritance tax to be "upon the right to receive property," "an excise tax levied on the transfer of property and not upon the property itself," "a tax upon the transfer transaction or right to receive property." The Wisconsin rule, therefore, is that the tax is an excise tax or a tax on a privilege. The thing or "commodity" upon which it is levied is "the transfer transaction or right to receive property."

Nunnemacher v. *State*, 129 Wis. 190.
Beals v. *State*, 139 Wis. 544.
State v. *Pabst*, 139 Wis. 561.
Estate of Bullen, 143 Wis. 512. (P. R., 101.)

This implies, however, the further qualification that the transfer transaction occurs under or by virtue of, or that the right to receive property is de-

rived through, the laws of Wisconsin. That state has no extra-territorial jurisdiction.

Bliss v. *Bliss*, 221 Mass. 201.
Walker v. *Mansfield*, 109 N. E. 647.
State v. *Brevard*, 62 N. C. 141.
Alvany v. *Powell*, 55 N. C. 51.
Bittinger's Estate, 129 Pa. 338.
Re Joyslin's Estate, 76 Vt. 88.
Matter of Swift, 137 N. Y. 77.
Clark v. *Clark*, 178 U. S. 186.

A decedent's personal property in a foreign jurisdiction will be subject, in a proper case, to taxation both at home and in the foreign state, if the laws of both states are requisite to the legal transfer of the property at the owner's death and it does not matter that the machinery of the law would not need to be invoked in the particular case.

Blackstone v. *Miller*, 188 U. S. 189.
Mann v. *Carter*, 74 N. H. 345.
Hopkins' Appeal, 77 Conn. 644.

It has been conceded from the outset that under this principle, the money on deposit in Chicago banks was subject to an inheritance tax in Wisconsin, Bullen's domicile, and in Illinois, the law of which is an essential element in the right of plaintiffs in error to receive the money. (Answer, P. R., 12.)

The inheritance tax laws of Wisconsin and Illinois are both adopted from New York. Both are, therefore, subject to the same rules of interpretation.

Estate of Bullen, P. R. 102.
People v. *Griffith*, 245 Ill. 532.

2. The limitation on the right to impose an inheritance tax.

The precise question involved is, did the personal property transferred pass by virtue of the assignment in trust in Illinois, or did it pass by the intestate laws of Wisconsin, as did the real estate and chattels in Wisconsin.

An inheritance tax cannot be levied by any state unless the operation of its law is necessary in order to effect the transfer.

Walker v. *Mansfield*, 109 N. E. 647.
In re Clark's Estate, 37 Wash. 671.
Clark v. *Treasurer & Receiver Gen'l.*, 218 Mass. 292.
Eidman v. *Martinez*, 184 U. S. 578.
Moore v. *Ruckgaber*, 184 U. S. 593.
Woodruff v. *Atty. Gen.*, 1908 App. Cas. 508.
Blackwood v. *The Queen*, 8 App. Cas. 82.
State v. *Brevard*, 62 N. C. 141.
Alvany v. *Powell*, 55 N. C. 51.
Re Joyslin's Estate, 76 Vt. 88.

This is a corollary to the entire line of decisions by this court of questions relating to inheritance taxes.

Mager v. *Grima*, 8 Howard 490.
Carpenter v. *Commonwealth of Pa.*, 17 Howard 456.
Scholey v. *Rew*, 23 Wallace 331.
United States v. *Fox*, 4 Otto 315.
Clapp, Collector, v. *Mason*, 4 Otto 589.
U. S. v. *Perkins*, 163 U. S. 625.
Magoun v. *Illinois Trust & Savings Bank*, 170 U. S. 283.

Knowlton v. *Moore*, 178 U. S. 41.
Plummer v. *Coler*, 178 U. S. 115.
Murdock v. *Ward*, 178 U. S. 139.
Orr v. *Gilman*, 183 U. S. 278.
Eidman v. *Martinez*, 184 U. S. 578.
Moore v. *Ruckgaber*, 184 U. S. 593.
Blackstone v. *Miller*, 188 U. S. 189.
Tilt v. *Kelsey*, 207 U. S. 43.
Keeney v. *New York*, 222 U. S. 525.

An inheritance tax is a lawful exercise of the taxing power *only when some necessary incident of the transfer transaction depends for its efficacy* upon the law of the state levying the tax. Where the *complete transfer transaction* may be accomplished *without invoking any privilege or sanction* conferred by the laws of the taxing state and where *no prohibition of the laws of the taxing state* could prevent the accomplishment of the transfer transaction, then the inheritance tax is levied upon a right which is purely imaginary and which *does not exist in fact.*

Walker v. *Mansfield*, 109 N. E. 647.
Tilt v. *Kelsey*, 207 U. S. 43.
In re Howard's Est., 80 Vt. 489.
Eidman v. *Martinez*, 184 U. S. 578.

The tests suggested in *Blackstone* v. *Miller* and *Eidman* v. *Martinez*, will determine whether the laws of Wisconsin apply to the present transfer transaction. Suppose Wisconsin had "turned back the current of legislation" and forbidden such an assignment in trust, or had denied the right to transfer at death more than one-third of one's property. This could not have affected in any manner what-

soever, the transfer transaction under the Illinois assignment in trust or the right of the plaintiffs in error to receive the benefit of it. Hence, Wisconsin law accorded no privilege which the state could tax.

Blackstone v. *Miller*, 188 U. S. 189.
Eidman v. *Martinez*, 184 U. S. 578.
Moore v. *Ruckgaber*, 184 U. S. 593.

Inasmuch as the transfer transaction in this case could be carried to completion *without the aid of Wisconsin law*, there was no transfer transaction or right to receive property under Wisconsin law. The right or privilege taxed by Wisconsin did not exist, and a judgment against a citizen of the United States for a tax on something which does not exist, deprives him of his property without due process of law and takes his private property for public use without just compensation.

Union Refrigerator Transit Co. v. *Ky.*, 199 U. S. 194.
Delaware, L. & W. R. R. Co. v. *Pa.*, 198 U. S. 341.
Louisville & J. Ferry Co. v. *Ky.*, 188 U. S. 385.
Metropolitan L. Ins. Co. v. *New Orleans*, 205 U. S. 395.
Buck v. *Beach*, 206 U. S. 392.
State Tax on Foreign Held Bonds, 15 Wallace 300.
Commonwealth of Ky. v. *West India Oil Refining Co.*, 138 Ky. 828.

It is not sufficient to authorize an inheritance tax, that the courts of a state are open to the parties interested for the assertion of their rights under the contract by which the transfer transaction is

effected at the death of the assignor. This is a privilege which the laws of every state afford. If the mere privilege of using the courts of a state for the enforcement of the transfer transaction authorizes an inheritance tax thereon, every state could tax every inheritance. If Wisconsin could tax this transfer transaction, so could Maine and California for the same reason. *No necessary incident of the transfer* by the assignment in trust *depends for its efficacy* upon the law of any state other than Illinois. Hence, no state other than Illinois can levy an inheritance tax on the transaction.

Walker v. *Mansfield*, 109 N. E. 647.

The general rule that personalty in a foreign state passes by the law of the decedent's domicile and is therefore subject to a domiciliary tax is held in California

> "subject to the limitation that there be no rule to the contrary in the state where the personal property is actually located."
>
> *In re* Hodges Estate, 150 Pac. 344.

Illinois has a rule to the contrary where the *situs* of such personalty has been fixed by placing it permanently in the state. The imposition of the Illinois inheritance tax on the foreign bonds and stocks here involved proves the existence of such rule, limiting the more general one of *mobilia sequuntur personam*.

People v. *Griffith*, 245 Ill. 532.

3. The Wisconsin tax on the annuities of nonresidents.

Lack of jurisdiction in Wisconsin is illustrated by the taxes of $160.93 and $84.39 on the annuities

of Mrs. Cleghorn and Mrs. Bullen. (P. R., 108.) They are not parties to this writ of error. They are non-resident aliens. They did not, nor did the Northern Trust Company, appear in any of the Wisconsin courts. No personal service was ever had on any of them. (P. R., 99.) The Trust Company did not accept the assets in Wisconsin. Thus the Wisconsin judgment was, as to these annuitants, a judgment against non-residents of whom the court had no jurisdiction, taxing a transaction occurring in a foreign state and collectible out of property located in a foreign state. Thus the state has overstepped its right to impose an inheritance tax.

4. The reason which exempts from inheritance taxation real property in a state foreign to its owner's domicile applies with equal force to the personal property held under the assignment in trust.

Real estate in a foreign jurisdiction is never subject to an inheritance tax at the domicile of its owner.

Matter of Swift, 137 N. Y. 77.
Bittinger's Estate, 129 Pa. 338.
Connell v. *Crosby*, 210 Ill. 380.
Orr v. *Gilman*, 183 U. S. 278.

This is true, because (a) the title is transferred by the law of the state wherein the land lies; (b) the law of the state of the owner's domicile does not furnish any factor or incident necessary to the efficacy of the transfer of title; (c) the law of one state cannot control the transfer of land situated in another state.

Clarke v. *Clarke*, 178 U. S. 186.

These reasons also apply with equal force to intangible personalty held permanently in a foreign state. Wisconsin has no more right to tax the transfer transaction embodied in the assignment in trust than it would have had to tax the transfer of real estate in a foreign state.

5. The opinion of the Supreme Court of Wisconsin.

The opinion of the court (P. R., 101) declaring the maxim *mobilia sequuntur personam* binding in Wisconsin, bases its decision solely upon the *situs* of the property transferred by the assignment in trust. The opinion seems to overlook a distinction suggested by its own language. If the inheritance tax is upon the transfer transaction or right to receive property, then the situs of the thing taxed is the situs of the *right to receive the property*, not the situs of the *property itself*. The determining factor is not the location of the property, but whether the beneficiary came into possession of it through the exercise of a privilege conferred by the state.

People v. *Griffith*, 245 Ill. 532.

The maxim *mobilia sequuntur personam* may only be resorted to when convenience and justice so require. It is not allowed to obscure the facts when the facts become important.

Blackstone v. *Miller*, 188 U. S. 189.

Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395.

Union Refrigerator Transit Co. v. *Ky.*, 199 U. S. 194.

The right to impose an inheritance tax does not

depend directly upon the situs of the property, but upon the law under which it is transferred.

"Taxation"—"Situs of property," 37 Cyc. 1564.

The situs of the property, however, may determine under what law the transfer is made, hence the importance of determining the situs. The determination of the situs of the property should be made as preliminary to the determination of the *situs of the right to transfer it*. With this in view, we shall refer to the decisions concerning the situs of personal property for the purposes of general taxation.

6. The situs of intangible property held by a trust company doing business in Illinois.

The general rule as to taxation is that where personalty is out of the state of the owner's domicile, that which is tangible is taxable where it is located and is not taxable at home. That which is intangible, and therefore likely to escape foreign taxation, has its situs at the owner's domicile and is taxable there.

Union Refrigerator Transit Co. v. *Ky.*, 199 U. S. 194.

There is a well recognized exception that not only tangible property located in a state foreign to the owner's domicile, but intangible property so located and held there for permanent investment or use in business has its situs in the foreign jurisdiction and is taxable there and not at the owner's domicile.

Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395.

Commonwealth of Ky. v. *West India Oil Refining Co.*, 138 Ky. 828.

In re Lewis' Estate, 203 Pa. 211.

In the Union Refrigerator Transit Company case, the reason assigned for taxing tangible personalty at its situs and not at its owner's domicile, is that tangible property is *visible, easily found* and *difficult to conceal* and *the tax readily collectible.* All these considerations are applicable to the intangible property held under the assignment in trust. The Illinois statutes require Illinois trust companies to report to the state auditor the amount of the personal property on hand in every trust.

> An Act to Provide for and Regulate the Administration of Trusts by Trust Companies, in force July 1, 1887. Hurd's Statutes of 1913, Chapter 32, paragraphs 129-147.

Paragraph 137, Section 9 of the Act is in part as follows:

> "Such companies shall file with the said auditor, during the month of January of each year, a statement under oath, of the condition of such company on the thirty-first day of December next preceding, exhibiting the following items in the following form: * * * (c) A list and brief description of the trusts held by such company, the source of the appointment thereto, and the amount of real and personal estate held by such company by virtue thereof."

Under this act the amount of the intangible personalty held by The Northern Trust Company under the assignment in trust, was a matter of public record in the office of the state auditor of Illinois. If not literally "visible" it was at least *easily found* and *impossible to conceal* and the *tax readily collectible.* Taxes had been paid on it in Illinois before Mr. Bullen's death. (P. R., 81.) A general tax which was a lien on it prior to his death and was afterward paid, amounted to $4,775.69. (P. R., 55.)

The situs of the intangible property held by The Northern Trust Company was, therefore, in Illinois, both under such cases as

Union Refrigerator Transit Co. v. *Ky.*, 199 U. S. 194,

and

Delaware, Lackawana & W. R. R. Co. v. *Pa.*, 198 U. S. 341,

and also under those such as

Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395,

and

Commonwealth of Ky. v. *West India Oil Refining Co.*, 138 Ky. 828.

7. The owner's right to fix the situs of his personal property.

It is within the power of any citizen of the United States to fix the situs of his personal property at a place other than his domicile.

Delaware, L. & W. R. R. Co. v. *Pa.*, 198 U. S. 341.

Metropolitan Life Ins. Co. v. *New Orleans*, 205 U. S. 395.

Commonwealth of Ky. v. *West India Oil Refining Co.*, 138 Ky. 828.

If it is possible in any case for an owner to fix the situs of his intangible personal property outside of the state of his domicile, it was done in this instance by Mr. Bullen.

(1) He never had taken any of the securities in question into Wisconsin. From the time he went there to reside he kept these securities in a safety deposit box in Chicago, until December 11, 1902, when he delivered them to The Northern Trust Company. (P. R., 99.) Thereafter the trust company always held

them, either as his trustee or his agent. (P. R., 53.) Mr. Bullen lived until 1908.

(2) All the arrangements with the Trust Company with reference to the assignment in trust and the subsequent further assignment in trust, were made in Chicago. (P. R., 53.)

(3) By the terms of the assignment in trust the legal title to the securities was vested in an Illinois corporation which was not authorized to do business in Wisconsin. (P. R., 100.) This assignment provided by its terms that the laws of Illinois should govern in the interpretation of it.

(4) Mr. Bullen deliberately placed these securities in the possession of a trust company which was bound to make public record of their value and location in Illinois and, although he had the right to revoke the trust and remove the trust property, he allowed it to be taxed in Illinois and the trustee paid taxes on it. (P. R., 55, 81, 100.)

Thus it appears, that the decision of the Supreme Court of Wisconsin is based on an erroneous premise as to the situs of the property. The property itself had its situs in Illinois. This fact has a direct bearing upon the ultimate question, *under the law of what state did the transfer transaction become effective?*

8. The judgment levying the Illinois Inheritance Tax being entitled to full faith and credit is conclusive on the Wisconsin courts as to the law under which the transfer transaction became effective.

The levy of an inheritance tax in Illinois is effected through the judgment of a County Court.

Connell v. *Crosby*, 210 Ill. 380.

The judgment in this case of the County Court of Cook County levying the Illinois inheritance tax, insofar as it adjudicated any of the questions here in controversy, was binding upon the courts of Wisconsin.

Tilt v. *Kelsey*, 207 U. S. 43.
In re Clark's Estate, 37 Wash. 671.

On the $936,000 of securities (exclusive of the $25,000 insurance policy which was not taxed), which were held by The Northern Trust Company at the time of Mr. Bullen's death (P. R., 68-70), an Illinois inheritance tax of $8,569.51 was levied. The difference between this and the Wisconsin tax of $20,184.71, is explained by the fact that the Illinois tax was then but 1 per cent. as against a sliding scale in Wisconsin of from 1 to 2½ per cent. and the Illinois exemptions were greater than those of Wisconsin. (P. R., 107; *Connell* v. *Crosby*, 210 Ill. 380-390.) Of the $936,000 of securities taxed, substantially $570,000 were stocks, bonds, and other evidences of indebtedness of corporations or persons foreign to Illinois. (P. R., 68-70, Exhibit B.)

If these $570,000 of securities foreign to Illinois actually belonged to Mr. Bullen at his death, they were not taxable in Illinois, but were taxable in Wisconsin, the owner's domicile.

People v. *Griffith*, 245 Ill. 532.

If they belonged to The Northern Trust Company and were held in Illinois, they were taxable in Illinois and hence not in Wisconsin. The fact that the Illinois court levied an inheritance tax upon them, necessarily involves a conclusion on the part of that

court, that for the purposes of inheritance taxation they belonged to The Northern Trust Company and not to Mr. Bullen. This decision is binding under the full faith and credit clause upon the courts of Wisconsin.

Tilt v. *Kelsey*, 207 U. S. 43.

Even if the Illinois judgment were erroneous, it would be binding in a collateral proceeding in Wisconsin.

In re Clark's Estate, 37 Wash. 671.

The remaining $366,000 of securities taxed in Illinois might have been taxed because, being Illinois securities, Illinois law would have to be invoked to make effective the right of the plaintiffs in error to receive them. Nevertheless, they were held in the same manner and under the same instrument as the securities foreign to Illinois and the right of the plaintiffs in error to receive them was, therefore, of the same character as their right to receive the securities foreign to Illinois. Hence, although the Illinois judgment itself may not directly so determine, their transfer was effected in the same manner as that of the foreign securities and they are no more taxable in Wisconsin than are the securities which the Illinois court has adjudged not to be taxable there.

II.

The assignment in trust having been made upon an actual consideration was not a gift but a valid contract and the law taxing it impairs the obligation of the contract.

That the assignment in trust was a contract entered into in good faith, transferring the property in trust upon an actual consideration and with no intent to evade an inheritance tax, is evident from the following facts:

(1) Mrs. Bullen assigned a $25,000 insurance policy for the purpose of enabling Mr. Bullen to turn it over to the Northern Trust Company, among the securities covered by the assignment in trust. (P. R., 54-55.)

(2) The assignment in trust was made in December, 1902, before the Wisconsin inheritance tax law went into force. (P. R., 54.) Wisconsin Laws of 1903, Chap. 44, page 65.

(3) The negotiations for the assignment in trust covered some two years and were complicated by the ill health of both Mr. and Mrs. Bullen. (P. R., 52-53.) At first she refused to make the assignment of the $25,000 insurance policy.

(4) The policy was not transferable without Mrs. Bullen's consent and the assignment carried all her rights therein. The description of the policy after the assignment indicates that the assignment was complete. (P. R., 66, item before the last of Schedule A; P. R., 74; P. R., 70, item 22.)

(5) The terms of the assignment in trust indicate that it was the result of a carefully developed plan by Mr. and Mrs. Bullen to provide for their children and others dependent upon them.

If the consideration paid were deemed inadequate this fact might be evidence of bad faith in the transaction. There seems to be no possible reason to question the good faith of the parties here. The consideration was at least a substantial one. This rendered the assignment in trust a binding contract, the obligation of which is protected from impairment.

Constitution of the United States, Art. I, Sec. 10.

Gelsthorpe v. *Furnell*, 20 Mont. 299.

This case is distinguished by the payment of the consideration from the case of

Chanler v. *Kelsey*, 205 U. S. 466.

We concede that if this court should decide that the judgment of the County Court of Cook County is conclusive upon the Wisconsin court as to the situs of the property and as to the right to transfer it, then it would also be conclusive against our contention that the assignment in trust was a contract upon consideration and not a gift. Otherwise we insist that the judgment for the Wisconsin tax so interprets the Wisconsin law as to render it a law impairing the obligation of contracts.

III.

The levy of a tax by Wisconsin on the amount already paid for the inheritance tax in Illinois is erroneous because the amount so paid never passed to the plaintiffs in error. A tax upon this deprives them of their property without due process of law.

1. There was no transfer to plaintiffs in error of the $8,569.51 *paid for the Illinois inheritance tax.*

The Illinois inheritance tax of $8,569.51 was never received by plaintiffs in error. They did not become entitled to it on the death of Mr. Bullen. They never had any right to receive it. There was no transfer transaction relating to it under the laws of either Wisconsin or Illinois or any other jurisdiction. The transfer transaction under the assignment in trust consisted in transferring to plaintiffs in error only the trust property after it had suffered a diminution by the amount of the $8,569.51 paid for the Illinois inheritance tax.

United States v. *Perkins*, 163 U. S. 625.
People v. *Richardson*, 269 Ill. 275.

United States v. *Perkins* was decided May 25, 1896, and thereby established on this point the New York law. The Wisconsin inheritance tax law was adopted from New York in 1903 and prior decisions concerning it were thereby adopted as a part of the Wisconsin law.

Bullen's Est. (P. R., 102.)

2. The circumstances lend importance to the question.

Although the amount of the Wisconsin tax on the $8,569.51 is not large, the circumstances lend a practical importance to the question for the following reasons:

(1) The growth of inheritance taxation has been extensive and rapid. In 1895 only three states taxed direct inheritances. In 1915 thirty states taxed direct inheritances. All but six of the United States now tax the inheritances of collaterals. (Blakemore & Bancroft, Inh. Taxes 1283; Ga. Stats. 1913, p. 91; Ariz. Stats. 1912, Chap. 15; Ind. Stats. 1913, Chap. 47; Nev. Stats. 1913, Chap. 266.)

(2) There was grave doubt in 1895 whether progressive inheritance taxes would be held constitutional. Now most states have progressive taxes.

(3) At that time no state imposed a tax in excess of 5 per cent. The present California inheritance tax law provides for taxes on direct inheritances of from 2 per cent. to 15 per cent. and on inheritances of collaterals of from 6 per cent to 30 per cent. (California Laws of 1915, Chapter 189, Secs. 1 and 2, amending Secs. 5 and 6.) Arkansas has a maximum rate on collateral inheritances of 24 per cent. (Arkansas Statutes 1913, Chapter 197, Secs. 4 and 5.)

(4) The tendency to increase the rates of inheritance taxation is worthy of attention. (*McGannon* v. *State*, 33 Okla. 145.)

(5) Any state legislature, unless expressly prohibited by the state constitution, may impose as large a tax as it deems proper or take for the public use all the property of each citizen at his death. (*Eyre* v. *Jacob*, 14 Grat. 422; *State* v. *Alston*, 94 Tenn. 674; *State* v. *Hamlin*,

86 Me. 495; *Brettun* v. *Fox*, 100 Mass. 234; *Pullen* v. *Comrs.*, 66 N. C. 361; *In re* Speed, 216 Ill. 23.)

(6) The President of the United States in his message to Congress December 4, 1906, recommended a heavy progressive federal inheritance tax for the purpose of reducing "swollen fortunes." (Congressional Record 41, p. 28.)

These considerations indicate that the progress of legislation toward higher inheritance taxes has not reached its limit.

The question here involved would have practical importance if personal estate of a million dollars or more belonging to a resident of California were located in Arkansas and passed to a collateral relative. It might suffer a diminution of 24 per cent. of its value in Arkansas. If the remainder were transferred to California, the question would arise whether it should suffer a further diminution of 30 per cent. of the property coming from Arkansas or 30 per cent. of the original value of the estate. If the latter course were followed, the result would be not only most unjust, but seriously burdensome.

IN CONCLUSION.

1. *As to the authorities.*

This case is clearly differentiated from the case of *In re* Keeney's Estate, 222 U. S. 525.

That decision rests upon the fact that the transfer of the property took place in New York, the decedent's domicile, and that the transfer was taxable as of the time when it was made, although the tax did not fall due until the death of the transferor. Here the transfer took place in Illinois, out of the jurisdiction of the domicile.

We find no authorities sustaining inheritance taxes at the owner's domicile, on personal property, the legal title to which was *held by a trustee* in a foreign jurisdiction, and on which an inheritance tax has been levied in the foreign jurisdiction.

Justice may forbid the resort to a trust agreement to avoid altogether an inheritance tax. On the other hand, justice does forbid that when property placed permanently within the jurisdiction of a state has been taxed because it has its situs there, it should be again taxed because of a legal fiction—contrary to fact—that it has its situs elsewhere.

Courts do not favor double taxation. Where it is necessary they regret the necessity.

Blackstone v. *Miller*, 188 U. S. 189.

In re Strong, 17 N. J. Law J. 234.

Double inheritance taxes are levied because the law requires them, not because of the justice of so doing. If one can invoke a legal method of passing his property at his death under the law of a single state and thus escape a double inheritance tax, there is no reason, legal or ethical, why he should not do so.

2. The nature of the tax here imposed.

An inheritance tax may be imposed on the owner's right to transfer property at his death, or on the right of the heir or devisee to receive property at the death of its owner. The latter explanation is usually preferred.

West, The Inheritance Tax 169.
Blakemore & Bancroft, Inh. Taxes 7.
State v. *Alston*, 94 Tenn. 674.
Gelsthorpe v. *Furnell*, 20 Mont. 299.
State v. *Ferris*, 53 Ohio State 314.

The latter explanation has been adopted in Wisconsin and the repeated definition given the tax by the Supreme Court of that state excludes the former. The tax is levied in that state only on the "transfer transaction or right to receive property."

Nunnemacher v. *State*, 129 Wis. 190.
Beals v. *State*, 139 Wis. 552.
State v. *Pabst*, 139 Wis. 561.
Estate of Bullen, 143 Wis. 512.

The taxes imposed cannot be upon any privilege accorded the plaintiffs in error under the laws of Wisconsin. The one remaining theory of the tax, that it is upon the receipt by citizens of Wisconsin

of property coming to them from a foreign jurisdiction, is also to be excluded for two reasons:

(1) The Supreme Court of Wisconsin holds that the tax is not a tax on persons.

(2) It cannot be sustained as a tax upon income because:

(a) The Supreme Court of Wisconsin in its decision of this case inferentially excludes this theory.

(b) An income tax in Wisconsin at the time of Mr. Bullen's death, September 10, 1908, would not have been lawful under the Wisconsin Constitution. The present Wisconsin income tax law passed in 1911 (Chap. 48a, Wisconsin Statutes of 1913) was passed under the authority of an amendment to the Wisconsin Constitution permitting taxes on incomes, which taxes might be graduated and progressive. This amendment to the Constitution of Wisconsin was passed some two months after Mr. Bullen's death (November, 1908). (Art. VIII Wis. Cons., Wis. Statutes of 1913, page 22.)

It appears, therefore, that the State of Wisconsin levied this tax upon a supposed right of the plaintiffs in error to receive the proceeds of the transfer.

We cannot assume that it intended to levy this tax upon the transfer transaction or right to receive property accorded solely by Illinois. We must assume that the State of Wisconsin levied this tax upon a supposed right, necessary in some respect to the transfer transaction and accorded by Wisconsin law to the plaintiffs in error. This being an erroneous assumption and the tax being therefore levied upon a thing which does not exist in fact, the judgment of the court below deprives the plaintiffs in error of their rights under the Constitution of the

United States and the Fifth and Fourteenth Amendments thereof and we ask that it be reversed.

The plaintiffs in error stand ready to assent to such tax as the Wisconsin court, upon further proceedings, may adjudge on the transfer of the real estate and the bank deposits in Illinois. But they insist they should not be taxed on any other items than those the right to transfer which could not have been exercised without the benefit and operation of the Wisconsin law.

Respectfully submitted,

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Supreme Court, U. S.
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No. 24,403

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1915

No. 263

MARY LENORE BULLEN, GEORGE BULLEN, JR., RICHARD NIXON BULLEN, WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN,

Plaintiffs in Error,

vs.

THE STATE OF WISCONSIN,

Defendant in Error.

Error to the County Court of Milwaukee County, Wisconsin.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

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No. 24,402

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1915.

No. 262.

MARY LENORE BULLEN, GEORGE BULLEN, JR., RICHARD NIXON BULLEN, WILLIAM GRAHAM BULLEN and JOHN NIXON BULLEN,

Plaintiffs in Error,

vs.

STATE OF WISCONSIN,

Defendant in Error.

Error to the County Court of Waukesha County, Wisconsin.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR.

This case is brought here on a writ of error to review a final judgment of the county court of Waukesha county, Wisconsin, fixing and imposing an inheritance tax upon the estate of George Bullen, deceased. The case was tried in the county court and from the judgment in that court the plaintiffs in error here appealed to the circuit court for Waukesha county.

There the judgment of the county court was modified in respect to the computation of the tax, so as to effect an increase in the amount thereof, and in other respects affirmed. From this judgment the plaintiffs in error here appealed to the supreme court of the state, where the judgment of the circuit court was affirmed. On all points material here, the judgments and determinations of the three courts of the state were in substance and effect the same, both on the law and the facts. (Trans. pp. 14–26; 32–49; 89–104.)

The only respect in which the judgment of the state courts is here challenged is that the state courts held and included as subject to said tax certain intangible personalty, stocks, bonds, notes, and policies of life insurance, valued at $936,761.71, (Paragraph (3), page 2, Brief for Plaintiffs in Error) which were, at the time of decedent's death, in form, held in trust by The Northern Trust Company, an Illinois corporation, under the terms of certain assignments in trust executed by the decedent during his lifetime and by the terms of which the beneficial title, use and enjoyment of said property and the income therefrom vested upon his death in the plaintiffs in error, subject only to some small annuities therein provided for other relatives and subject to a certain discretion in the trustee as to the time and manner of payment over of some of the income and principal to the widow and sons. These assignments and the schedules of the securities to which they purported to

relate are printed in the Transcript (Trans, pp. 56–75), and will be considered more at length in what follows.

The only federal questions raised by the exceptions or assignments of error in or considered by the state courts and the only federal questions raised by the assignments of error here (Trans. pp. 8–9) are (1) whether the imposition of the inheritance tax upon the net value of these intangibles held by the trust company was a taking of the property of the plaintiffs in error without due process of law, in violation of the Fifth Amendment and the Fourteenth Amendment to the constitution of the United States, for the reason that said property was held and the transfer thereof accomplished outside of the state of Wisconsin, and (2) whether the imposition of said tax, by working a diminution of the property, impaired the obligation of the contract entered into between the decedent and the trust company for the benefit of these plaintiffs in error, in violation of sec. 10, art. I of the constitution of the United States.

STATEMENT.

Rather by way of supplementing than controverting the statement of the case as submitted on the brief for the plaintiffs in error, we will endeavor to direct the attention of the court to certain facts and circumstances dis-

closed by the record, and which we regard as the salient and significant, if not, indeed, the controlling facts of the case.

Residence.

Both the decedent and his beneficiaries, the plaintiffs in error here, were, at the time of his death, September 10, 1908, and for sixteen years prior thereto, actual and legal residents and citizens of the state of Wisconsin. (Trans. pp. 32, 35, 41, 44, 50, 51.) Neither the Northern Trust Company nor any of the beneficiaries not residents of Wisconsin have ever participated in these proceedings or objected to the tax or the validity thereof. (Trans. p. 99.) None of them is before this court.

The Property Involved.

The property, the transfer of which it is here claimed was beyond the power of the state to tax, was *intangible* personalty, stocks, bonds, notes and life insurance policies. (Ex. B, Trans. pp. 68–70.)

The Trust Assignments.

The original assignment in trust, dated December 11, 1902, but acknowledged under date of April 4, 1903, while purporting in terms presently to assign, transfer and set

over unto The Northern Trust Company the certain personal property described in Schedule "A" attached thereto, in its general nature and effect assimilates a testamentary disposition of property, taking effect upon the death of the donor. (Ex. A, Trans. pp. 56–64.)

After providing for the payment by the trustee out of the income of the property of the expenses of its administration, two annuities of $900 and some other small items, the instrument provides: (Italics ours)

> "Fifth. I, the donor, expressly reserve the right *to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life,* to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. *During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint,* and in default of any appointment during my lifetime, and at all events, after my death the said income and the said principal shall be applied, paid over or held as herein provided." (Trans. p. 57.)

This assignment further provides that the trustee "shall hold my house and farm in Waukesha county, Wisconsin, known as 'Minnewoc,' as a home for my wife, Mary Lenore Bullen, and our children," together with the chattels appurtenant thereto, and maintain the same out of the income of the estate. (Trans. pp. 57–58.) One-third of the re-

mainder of the income is then given to the wife to be paid to her or held and invested for her during her lifetime, in the discretion of the trustee, and it is provided, "The provisions of this instrument, together with the provisions for her and for our children *in my will*, shall be *in lieu of all homestead and dower rights.*" Should the widow elect to take under the law, all provisions for her under the trust were cut off. (Trans. p. 58.)

It is then provided:

> "The remainder of the income from the said trust estate shall be paid to me or for my benefit *during my lifetime* and *after my death* shall be set apart for my four sons above named, share and share alike." (Trans. p. 58.)

Providing for the disposition of the corpus of the estate, the assignment reads: "*Subject to my rights during my lifetime*, the said trustee shall hold for my said four sons equally the *entire principal* of the said trust estate * * *." Each son is to have one-third of his share of the principal on attaining twenty-five years of age, and the remainder on attaining thirty years of age, all, however, subject to this further express reservation: (Italics ours)

> "*No portion of principal or income, however, shall be paid to any beneficiary under this or the following paragraph prior to my death unless by my direction.*" (Trans. p. 59.)

The second assignment in trust, (Trans. p. 71), dated and acknowledged May 22, 1907, refers to the assignment executed April 4, 1903, recites that the donor thereby transferred certain personal property to The Northern Trust Company, and "intended to transfer" certain real estate to said trust company, and that: (Italics ours)

"Whereas, *prior to January 1st, 1904, I repossessed myself of the personal property transferred by the said assignment in trust,* but permitted the said assignment in trust to remain in full force and effect *with the purpose of transferring the said real estate to the said Trust Company,* subject to the trusts set forth in the said assignment in trust; and

"Whereas, I *now* desire to have certain personal property, as well as the said real estate when it shall be transferred, held under the trusts set forth in the said assignment in trust;

"Now, therefore, in consideration of the premises and of the sum of One Dollar ($1.00) in hand paid by the said The Northern Trust Company, the receipt whereof is hereby acknowledged, *I hereby assign,* transfer and set over unto said The Northern Trust Company, its successors and assigns, all those certain life insurance policies, bonds, notes, shares of stock and other personal property particularly *described in Schedule A hereto attached,* in trust, nevertheless, for the uses and purposes, and subject to the conditions particularly mentioned in my said assignment in trust bearing date December 11th, 1902, to the said The Northern Trust Company.

"It is the purpose of this assignment that the property hereby transferred and set over shall be held by the said Trustee upon

the same trusts and under the same conditions, and with the same rights and powers *as though the said property had been included in the original transfer to the said Trust Company under the said assignment in trust, and I had not repossessed myself of the same.*" (Trans. p. 71.)

Mr. Bullen's Health.

The negotiations for the making of the first assignment in trust were commenced in 1900 or 1901. (Trans. pp. 52, 76.) As found by each of the state courts in turn, the decedent was, at that time and prior thereto and at the time of the execution of the several assignments and until the time of his death, afflicted with an incurable nervous disease, termed "locomotor ataxia," liable at any time to result in paralysis and death, and he was at all said times aware that he was so afflicted. (Trans. pp. 15, 32, 41, 52, 76–77, 100.)

The Will.

The decedent left a last will and testament executed on the same date as the first assignment in trust, April 4, 1903, which last will and testament is of the same tenor as the said assignment in trust, but said will was never offered for probate or probated and no letters of administration were ever issued upon his estate anywhere except in this proceeding. (Trans. pp. 36, 45, 54.) This proceeding was

a special administration for the determination of inheritance tax, instituted upon petition of the public administrator of Waukesha county pursuant to a request made by attorneys for the Bullen heirs to the district attorney of Waukesha county. (Trans. p. 55.)

Control and Management of the Estate.

It appears and is found by each of the state courts that the decedent, after the making of the first trust assignment and before January 1, 1904, repossessed himself of all of the personal property which he had delivered to the trustee and took control and management thereof, directing the trust company to hold or transfer the same as his agent and not as his trustee. (Trans. pp. 16, 33, 42, 53, 71, 81, 102.)

The decedent continued until the time of his death *to receive the entire net income from the trust estate.* (Trans. p. 81.)

The deeds of the real estate in Wisconsin were never signed by the wife so as to pass her rights of dower and homestead therein, nor was the personalty appurtenant thereto ever delivered to the trustee. The decedent continued to occupy, use, manage and control all this Wisconsin property until his death and afterwards the trustee definitely renounced and refused to assume the trust as to this part of the estate and the same was treated in this proceeding as estate of the decedent passing

to the widow and sons under the intestate laws of the state of Wisconsin. (Trans. pp. 53, 100.)

The extent of the decedent's dealings with the trust property is suggested by a comparison of the schedules of the personal property at the time of the first assignment (Trans. pp. 64–66) and at the time of the second assignment (Trans. pp. 72–75), and the schedule of securities in the possession of the trustee at the time of decedent's death, (Trans. pp. 68–70). Such comparison discloses that of the securities transferred under the first assignment 459 bonds and certificates for $466,500 and 1670 shares of stock of the par value of $167,000, or about two-thirds of the original trust estate, were disposed of and no longer a part of the estate transferred at the time of the second assignment. On the other hand, some 493 bonds for $493,000 and 815 shares of stock of the par value of $81,500, included in the second assignment, were not included in the first assignment, but were presumably acquired by the decedent subsequent thereto. Comparison of the schedule of the second assignment with the list of securities on hand at the time of decedent's death discloses that some $54,000 of the bonds in the second assignment had been disposed of at the latter date and that of the estate at decedent's death some $135,000 of bonds had been acquired subsequent to the second assignment.

Life Policy No. 195589, Payable to the Wife.

Among the securities purported to be assigned by decedent to the trustee under the two assignments in trust and so included in the schedule of both assignments (Trans. pp. 66, 74–75) and in the possession of the trustee at the time of decedent's death (Trans. p. 70) was Policy No. 195589 of the Northwestern Mutual Life Insurance Company, a Wisconsin corporation, for $25,000 on the life of George Bullen, the decedent, and payable to Mary Lenore Bullen, his wife, and by her assigned, in form, to his executors, administrators and assigns. This policy contained no provision authorizing a change of beneficiary. (Trans. pp. 37, 46, 54–55.)

The trial court held that this policy was not lawfully assigned by the beneficiary so as to divest her rights thereunder and excluded it from the estate in fixing the inheritance tax. (Trans. p. 17.) It was likewise excluded by the circuit court. (Trans. pp. 39, 47.) The heirs took no exception in any of their exceptions filed in the circuit court to the finding of fact or conclusion of law upon this proposition. (Trans. pp. 89–95.) The state, however, was contending for the inclusion of this item in the estate and assigned error in the ruling of the lower courts and appealed to the supreme court thereon. Upon the state's appeal the supreme court held:

> "The only error urged on the state's appeal is, that the $25,000 insurance policy

assigned to The Trust Company should have been taxed. It appears that this policy was made payable to Mrs. Bullen as beneficiary and no right reserved in it or otherwise to change the beneficiary. It was assigned to the Trust Company, but it does not appear that Mrs. Bullen relinquished her rights therein, therefore, this property remained the property of Mrs. Bullen and was not a part of Mr. Bullen's estate; the court below, therefore, was right in refusing to tax it." (Trans. p. 104.)

Illinois Inheritance Tax.

The circuit court found and adjudged, according to the agreed facts (Trans. p. 55), that The Northern Trust Company paid out of the principal of the estate a tax of $8,569.51 to the county treasurer of Cook county, Illinois, as an inheritance tax on the securities of the decedent in its possession at the time of decedent's death (Trans. pp. 38, 46), but held that the amount so paid should not be deducted from the value of said securities before determining the amount of inheritance tax imposed upon said property by the laws of Wisconsin. (Trans. pp. 39, 47.)

While it appears that the Bullen heirs filed a formal exception (Trans. p. 94) to this conclusion of law in the circuit court, no error was assigned by them with respect thereto in the supreme court. ("Assignments of Error," Trans. p. 5.) Nor does it appear that any claim of error in that regard was urged upon the argument in the supreme court. (Par.

XVII, Petition for Writ of Error, Trans. pp. 5–6, referring to par. VI, X and XII, *id.*, Trans. pp. 2, 3, 4.) The supreme court, while noting in its statement of the case the fact of the payment of the tax in Illinois (Trans. p. 100), affirmed the judgment of the circuit court without reference in the opinion to the ruling of the circuit court as to this item and without in any way suggesting that the correctness thereof was either questioned or considered in the supreme court. (Trans. pp. 101–104.)

DECISION OF THE STATE SUPREME COURT.

The decision of the highest court of the state in this case (Trans. pp. 98–104, 143 Wis. 512, 128 N. W. 109) is by a unanimous court and follows established and recognized legal principles. It holds, following prior decisions of the same court, as well as the weight of authority elsewhere, that the tax in question "is a tax upon the transfer transaction or right to receive property" and neither a tax upon the person nor upon the property. (Trans. p. 101.) Noting the contention on behalf of the Bullen heirs that, the securities being in the state of Illinois and the assignment thereof to the trust company having been executed in that state, the Wisconsin inheritance tax could not apply thereto because both the transfer transaction and the subject matter were be-

yond the jurisdiction of the latter state, the court said:

> "This contention involves the situs of the property of Bullen transferred to the Trust Company, and the application of our inheritance law to such situation." (Trans. p. 101.)

The Statute.

The provisions of the Wisconsin inheritance tax statute here material (Sec. 1087–1, Vol. 3 Sanborn's Wis. Stats. 1906) are quoted on the opinion of the state supreme court as follows: (Italics ours)

> "A tax shall be and is hereby imposed *upon any transfer* of property, real, personal or mixed, or any interest therein, or income therefrom *in trust* or otherwise, to any person, association or corporation, except county, town or municipal corporations within the state, for strictly county, town or municipal purposes, and corporations of this state organized under its laws solely for religious, charitable or educational purposes, which shall use the property so transferred exclusively for the purposes of their organization within the state in the following cases:
>
> "1. When the transfer is by will or by the intestate laws of this state from any person dying possessed of the property while a resident of the state.
>
> "2. When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death.

"3. When the transfer is of property made *by a resident* or by a non-resident when such non-resident's property is within this state, or within its jurisdiction, *by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death.*

"4. Such tax shall be *imposed when any such person or corporation becomes beneficially entitled, in possession or expectancy,* to any property or the income thereof, by any such transfer whether made before or after the passage of this act; provided, that property or estates which have vested in such persons or corporations before this act shall take effect, shall not be subject to a tax; and provided further that contingent interests created by the will of any person who died prior to the passage of this act shall not be taxed." (Trans. pp. 101-102.)

Construction of the Statutes.

It is held that the statute was adopted from New York, together with the construction which it had received in the courts of that state prior to such adoption, which, as to personalty found outside the state, belonging to the estate of a resident decedent, held and applied the rule *mobilia sequuntur personam*, citing *Estate of Swift*, 137 N. Y. 77, and *Estate of Cornell*, 170 N. Y. 423. The court says:

"The effect of this rule is to make the legal situs of the property at the domicile of the decedent." (Trans. p. 102.)

The state supreme court quotes with approval and in effect adopts the ruling of the

New York court of appeals in the similar case of *Estate of Keeney*, 194 N. Y. 281, 287, where that court said: (Italics ours)

> "It is also urged that the trust property was at the time of the intestate's death in another state with the legal title in the trustee. This does not affect the liability of the transfer to taxation. The liability in this case *accrued at the time of transfer*, no matter when imposed." (Trans. p. 104.)

The state supreme court further expressly holds that under the state statutes defining the jurisdiction of the county court, that court had jurisdiction of this estate and jurisdiction to determine the inheritance tax thereon. (Trans. p. 104.)

Construction and Effect of the Trust Assignment.

Referring to its statement of the facts, the court said:

> "As we have seen Mr. Bullen reserved the right to direct and control the distribution of the trust property and to revoke the trust at any time during his life, and received during his lifetime the entire net income from the trust estate held by The Northern Trust Company. The trust agreement contains the following clause:
>
> " 'Fifth. I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take

possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and, at all events, after my death, the same income and the said principal shall be applied, paid over or held as herein provided.'" (Trans. pp. 102-103.)

With respect to the situs of the property and the nature and effect of the assignment in trust, the court holds: (Italics ours)

"We think under the authorities and the *established facts in this case that the situs of the property covered by the trust agreement was in the State of Wisconsin where Bullen lived and died*, and was subject to the Wisconsin inheritance tax. *Matter of Est. of James T. Swift, supra; Matter of Estate of Charles W. Cornell, supra; In re Corning's Est.*, 23 N. Y. S. 285; *Frothingham v. Shaw*, 175 Mass. 59; *Ford v. Ford*, 70 Wis. 19. It is true there is some conflict of authority on the point. Counsel for the heirs in their brief cite us to *In re Joslyn's Est.*, 76 Vt. 88, which appears to be out of harmony with the rule laid down in New York and Massachusetts. We feel constrained to hold to the New York and Massachusetts rule. In *Frothingham v. Shaw*, 175 Mass. 59, the court holds the general rule to be that personal property for the purpose of taxation has its situs at the domicil of the owner, and although this rule leads to double taxation that has not been accounted a sufficient objection to taxation of personal property to the owner during his life at the place of his

domicil, nor sufficient objection to the imposition of succession taxes after his death." (Trans. p. 103.)

And, after referring further to the *Swift Case* and the *Cornell Case, supra*, and to *Matter of Brandreth*, 169 N. Y. 437, and *Matter of Keeney*, 194 N. Y. 281, the court holds further:

"We think it quite clear upon the established facts that the transfer was made 'in contemplation of death' within the meaning of the law, *State v. Pabst*, 139 Wis. 561, and was also 'intended to take effect in possession or enjoyment at or after such death.' Subd. 3, sec. 1087-1; *Matter of Est. of Green*, 153 N. Y. 223; *Matter of Brandreth, supra; Matter of Est. of Charles W. Cornell*, 170 N. Y. 423; *Matter of Keeney*, 194 N. Y. 281. We conclude that the property covered by the trust agreement was subject to the inheritance tax." (Trans. p. 104.)

ARGUMENT.

We will argue the questions raised by the assignment of errors and the brief for plaintiffs in error under the following propositions:

I.

The facts of the case clearly support the decision of the state court that the assignment in trust was a transfer made "in contemplation of death" and "intended to take effect in possession or enjoyment" after the death of

the donor within the state inheritance tax statute, and that decision of the highest court of the state is conclusive here.

II.

This court will not examine the constitutionality of a state statute as affecting parties not before it.

III.

The record does not disclose any judgment imposing an inheritance tax in Illinois to which the Wisconsin court was bound to accord "full faith and credit."

IV.

The failure of the county and circuit courts to deduct from the amount of the estate upon which the tax in Wisconsin was computed the amount of inheritance tax paid in Illinois was not efficiently raised as a question for decision in the court below, does not present a federal question, and was not erroneous.

V.

The State of Wisconsin, in imposing this tax, impaired no obligation of any contract.

VI.

The tax was upon a transfer by a resident of Wisconsin in the nature of a testamentary distribution of intangible personal property the situs of which was in law in the state of the domicile and that state had jurisdiction to impose the tax.

I.

The Facts of the Case Clearly Support the Decision of the State Court that the Assignment in Trust was a Transfer made "in Contemplation of Death" and "Intended to take Effect in Possession or Enjoyment" after the Death of the Donor within the State Inheritance Tax Statute, and that Decision of the Highest Court of the State is Conclusive here.

The facts of the case are plain. Established by the state courts upon an agreed statement and upon uncontradicted evidence, they leave no room for controversy except possibly with respect to inferences or conclusions to be drawn from them. The decedent, for many years a resident of Wisconsin, assumed, by certain assignments in trust, to transfer certain intangible personal property for the benefit of and in expectancy to his wife and sons,

also residents of the state. The whole tenor of the assignments and the course of decedent's dealings therewith during his lifetime, the numerous reservations in the assignments constituting, taken together, an absolute and complete reservation to the decedent of the control and management of the property assigned and of the entire income therefrom and of the beneficial use and enjoyment thereof during his lifetime and his actual exercise of the rights so reserved all stamp the transaction indelibly with the quality and characteristics of a testamentary or post-mortem distribution of his estate.

The assignment in trust, while purporting, with one hand, to transfer *in praesenti* to certain beneficiaries a portion of the income, reaches forth with the other hand and withdraws the gift through the device of a declaration and reservation that "during my lifetime the principal and income shall be used for such beneficiaries and in such manner as I may from time to time appoint." The remainder of the income not so dealt with is expressly reserved to the decedent during his lifetime.

The provisions of the trust assignment providing for the disposition of the principal of the estate is prefaced in these words, "subject to my rights during my lifetime," and suffixed with another reservation, reading, "No portion of principal or income, however, shall be paid to any beneficiary under this or the following paragraph prior to my death unless by my direction."

In the exercise of these rights reserved, the decedent, during the very year that the first trust assignment was executed, as recited by him in the second trust assignment, repossessed himself of all personal property by him originally assigned and retained possession thereof for more than three years thereafter and until the execution of the second trust assignment. While the location of the securities, or of the small proportion of them that continued in the vaults of the trust company to represent a part of the estate was probably not changed, the trust company, during all of his period, acted by express direction of the decedent only as the custodian of the securities and the agent of the decedent and not as his trustee under the assignment. So that, during all of this period, there was nothing of the personal property involved in this controversy as to which the trust was operative or had any legal or actual substituting force. The instrument itself was allowed in form to remain in effect, but this was done, as recited by the decedent in the second assignment, with reference to a purpose of the decedent of transferring certain real estate to the trust company, which the decedent had "intended to transfer," both which, as appears by the second assignment, had not been so transferred at the date thereof, but was to be transferred thereafter.

It appears, therefore, that the alleged trust, during all of this period from Jan. 1, 1904, to May 22, 1907, had no existence either in law or in fact as to any property, real or personal,

and that the only office of the original assignment in trust is that by the reference thereto made in the subsequent assignment of May 22, 1907, the terms and conditions of the original instrument became the terms and conditions of the second assignment.

There is nothing in this record to show that the decedent maintained any different attitude or dealt in any manner differently with his personal property after the execution of these trust assignments, or either of them, from what he had done before, or in any manner different than might be done in the usual and ordinary course by any owner of a similar estate consisting largely of intangible property. It appears that the decedent had for many years observed the practice of keeping these securities in the vaults of a Chicago trust company. He had probably always dealt with them in this manner through the instrumentality of a trust company or a similar institution acting as his custodian and agent.

The execution of these trust assignments with the rights reserved therein created not the slightest inconvenience or difficulty and, in fact, caused not the slightest practical difference affecting either business convenience or legal right of the real owner to continue to deal with the securities in the future as in the past. That he did in fact continue so to deal with them is clearly indicated by the large number of securities and the large proportion of the estate which were transferred, exchanged, bought or sold not only between the

time of the making of the first assignment and that of the making of the second assignment, but in a considerable degree, also, after the making of the second assignment.

It is a significant fact here that the trust assignment was buttressed and fortified by a last will and testament, duly executed by the decedent and of the same tenor as the trust assignment. This fact conclusively establishes that this so-called trust assignment took effect as to the decedent's estate and so as to affect the rights of the beneficiaries thereto, and was intended to take effect only upon the death of the donor. Manifestly, there was some doubt, and misgiving in the mind of the decedent lest the trust might, after his death, be assailed, perhaps successfully. By executing a valid will of the same tenor as the trust assignment he removed any possible inducement which his heirs at law, or any of them, might have to attack the trust, either upon any ground of illegality or upon any circumstances which might have arisen affecting its integrity.

It is a further significant fact that, at the time of these assignments and prior thereto and continuously to the time of his death, the decedent was afflicted with an incurable disease which might prove fatal at any time, and that he knew he was so afflicted.

Upon these considerations, we submit that the state courts were fully justified in fact and in law in finding and holding that the transfer of the intangible property here involved by the decedent in his lifetime to The Northern

Trust Company was a transfer made by him "in contemplation of death" and "intended to take effect in possession or enjoyment at or after such death," and for the benefit of the beneficiaries named in the assignment. The state court held that this property was subject to the state inheritance tax and held, following the New York court, that the liability for this tax accrued at the time of the transfer to the trust company, although not made payable by the statute until the right of the beneficiaries vested and became fixed upon the death of the donor.

If the state had jurisdiction to impose this tax, these questions, being questions decisive only of the construction of the state statute and questions of fact, are binding and conclusive upon this court.

It is well settled that the decision of the highest court of a state as to the construction and scope of a state law is binding upon this court.

U. S. Exp. Co. v. Minnesota, 223 U. S. 335;
Jacobson v. Massachusetts, 197 U. S. 11, 24.

Also it is the rule established by the decisions of this court that the determination of questions of fact will not be reviewed here upon a writ of error to the highest court of the state.

Illinois v. Economy Power Co., 234 U. S. 497, 523–524;
Miedreich v. Lauenstein, 232 U. S. 236, 243.

To overthrow the decision of the state court, the plaintiffs in error rely here upon just two circumstances, viz., that the transfer was made in Illinois, and that the securities were in Illinois. The argument upon the brief of counsel for the plaintiffs in error must, we think, be taken as conceding that, had the transfer been made in Wisconsin, or had the securities been in Wisconsin, or had the transfer been by will or by the intestate law of Wisconsin, the transfer would have been taxable, but it is contended that, because and solely because the transfer was by an assignment in trust executed in Illinois, and because the securities representing this part of decedent's estate were in Illinois, the state of Wisconsin was without jurisdiction to impose the tax.

As this is the main question, and, we think, the only question of moment presented by this writ of error, we will treat first some minor propositions argued on the brief of counsel for plaintiffs in error, which, we think, can be disposed of briefly and in a preliminary way.

II.

This Court Will not Examine the Constitutionality of a State Statute as Affecting Parties not before it.

The state courts construed the state inheritance tax statute as imposing the tax on two small gifts or annuities to beneficiaries

who were not residents of the state and who did not submit themselves to the jurisdiction by becoming parties to the proceedings in the state courts. Counsel for the plaintiffs in error argue upon their brief, pp. 17–18, that in this respect "the state has over-stepped its right to impose an inheritance tax." Their contention seems to be that the state court obtained no jurisdiction and that the inheritance tax law, as construed and applied by the state courts in this respect is unconstitutional and exceeds the power of the state.

These annuitants are not parties to this writ of error. If they have any objection to the payment of the small amount of tax assessed against their shares, amounting to $160.93 against one and $84.39 against the other (Trans. p. 48), they have not been heard to complain.

It is not necessary to argue here the right of the state to impose the tax as to these annuities, or to argue whether the provisions of the state statutes providing for obtaining jurisdiction by notice of the proceedings is sufficient to confer jurisdiction of nonresidents in such cases. It is the well settled rule here that one cannot have the constitutionality of a state law or the validity of a judgment of the state court reviewed in this court except upon grounds of illegality which affect him.

Giles v. Little, 134 U. S. 645;
McNulta v. Lochridge, 141 U. S. 372;
Engel v. O'Malley, 219 U. S. 128, 135;
Citizens Tel. Co. v. Fuller, 229 U. S. 322, 332;
German Alliance Ins. Co. v. Kansas, 233 U. S. 289, 418.

There is also a valid objection to counsel's argument upon this point in that the plaintiffs in error, if they ever had any right to question the validity of the judgment below upon this ground, have waived that right by failing to include it or refer to it in their assignments of error here. (Trans. pp. 8–9.)

Sec. 4, Rule 21;
Behn, M. & Co. v. Campbell, 205 U. S. 403;
Deitsch v. Wiggins, 15 Wall. 539;
Turnbull v. Payson, 95 U. S. 118.

The validity of the tax as to the annuitants, not being open for determination here, may not properly be considered or questioned here, even by way of make-weight in aid of counsel's argument.

III.

The Record does not Disclose any Judgment Imposing an Inheritance Tax in Illinois to which the Wisconsin Court was Bound to Accord "Full Faith and Credit."

We are told in the brief of counsel for the plaintiffs in error (pp. 23–25) that the inheritance tax in Illinois was levied pursuant to a judgment of the county court of Cook county and that this judgment, "insofar as it adjudicated any of the questions here in controversy, was binding upon the courts of Wisconsin." There is nothing on the record which shows that the Illinois tax was paid pursuant to any

judgment of any court, but only, as set forth in the agreed statement of facts (Trans. p. 55), and the findings and judgment of the circuit court (Trans. pp. 38–46) and the statement of the case for the supreme court (Trans. p. 100), that an inheritance tax was in fact paid in Illinois, and the amount thereof.

The courts of Wisconsin are not bound to and do not take judicial notice of the judgments of the courts of Illinois. Whatever may have been adjudicated with respect to the situs of the property, its ownership or its liability for inheritance tax in Illinois by the Cook county court was nowhere in these proceedings brought to the attention of the Wisconsin courts. In any event the courts of Wisconsin were not bound or concluded by any judgment of courts of Illinois which was neither pleaded nor proved before them.

The plaintiffs in error, not having proved any Illinois judgment and not having assigned any error, either in its assignments of error before the supreme court of the state (Trans. p. 5), or in its assignments of error here (Trans. pp. 8–9), to the effect that the decisions of the circuit court and the supreme court of the state erred in not giving full faith and credit to the judgment of the Illinois court, in violation of sec. 1, art. IV, Const., cannot raise that question here. As that question cannot be determined upon this writ, error in that respect will not be assumed against the decisions below or argument based thereon be indulged in support of counsel's other contentions.

IV.

The Failure of the County and Circuit Courts to Deduct from the Amount of the Estate upon which the Tax in Wisconsin was Computed the Amount of Inheritance Tax paid in Illinois was not Efficiently Raised as a Question for Decision in the Court Below, does not Present a Federal Question, and was not Erroneous.

While it appears that the plaintiffs in error excepted to the conclusion of law in the circuit court by which that court held that the amount of inheritance tax paid in Illinois should not be deducted in computing the tax payable in Wisconsin, this exception was, in effect, waived, because no error was assigned in respect thereto in the supreme court. (Assignments of Error, Trans. p. 5.) Nor does it appear from the statements upon the petition for writ of error (Par. XVII, Trans. pp. 5–6, referring to Par. VI, X and XII, Trans. pp. 2, 3, 4) that this question was pressed for a determination upon the argument in the supreme court of the state. It was not considered or passed upon in the opinion of that court.

It is the well settled rule in this court that errors not pressed and relied on below are conclusively deemed to have been waived—that, when the decision of the highest court of a

state is challenged in error, only the propositions which have been called to its attention and upon which it has ruled are open to consideration, and that the scope of review here cannot be enlarged by assignments of error to include questions not efficiently raised in the court below.

Cleveland & P. R. Co. v. Cleveland, 235 U. S. 50, 53;
Dewey v. Des Moines, 173 U. S. 193, 199–200;
Montana Ry. Co. v. Warren, 137 U. S. 348, 351;
Jordan Mining Co. v. Societe des Mines, 164 U. S. 261, 264;
Gila Valley Ry. Co. v. Hull, 232 U. S. 94;
Erie R. Co. v. Purdy, 85 U. S. 148, 154;
L. & N. R. Co. v. Woodford, 234 U. S. 46;
Spies v. Illinois, 123 U. S. 131, 181.

The principle upon which the courts of Wisconsin hold that, in computing an inheritance tax payable there, an inheritance tax paid elsewhere upon the same estate or a part thereof should not be deducted is that, in contemplation of the inheritance tax statute, the tax accrues and attaches at the instant of the transfer and is payable by the legatee out of the legacy, and that it is measured upon the whole amount of the legacy. In the eyes of the law, so construed, it is precisely the same as though the legatee did in fact receive into his possession the entire amount of the legacy and then was required to pay back to the state

the amount of the tax thereon, the tax being upon the right or privilege to receive the legacy and the amount thereof being measured in this manner.

This determination by the state courts of the construction and effect of the statute and the method of determining the amount of the tax, being upon purely questions of local law, is conclusive here.

Orr v. Gilman, 183 U. S. 278, 288, 289—290.

The Wisconsin court had a right to assume, in the absence of any showing to the contrary, that the inheritance tax in Illinois was of the same nature and incidence as that of Wisconsin. The taxes of both states, therefore, accrued simultaneously and upon the same legacies and upon the same amounts of property. If the state of Wisconsin had jurisdiction to impose the tax and imposed it under rules of law which apply alike in like cases, the construction of the statute and the rule for measuring the tax clearly raise no federal question.

Baltic Mining Co. v. Massachusetts, 231 U. S. 68;

Wis.-Mich. Ry. Co. v. Powers, 191 U. S. 379;

Horn Silver Min. Co. v. New York, 143 U. S. 305, 317–318.

The rule adopted by the state court in this case in refusing to deduct the tax paid in Illinois is in accordance with the accepted

principle approved in the only court decisions dealing with that question.

Blackstone v. Miller, 188 U. S. 189;
Matter of Gihon, 169 N. Y. 443;
McElroy, Transfer Tax Law, (2d ed.) § 621.

In *Matter of Gihon, supra*, the surrogate court and the appellate division in New York had held that the federal legacy tax paid under the War Revenue Act of June 30, 1898, should be deducted in computing the inheritance tax in New York. The court of appeals, in construing the inheritance tax law and overruling this deduction, said:

"The federal tax is of exactly the same nature as the state tax; a tax not on property, but on succession; that is to say, a tax on the legatee for the privilege of succeeding to property. (*Knowlton v. Moore*, 178 U. S. 41.) The federal tax is necessarily of this character, for a direct tax, unless apportioned according to population, would be repugnant to the Constitution of the United States. Under that statute, also, it is the amount of the legacy, not of the estate, that determines the rate of taxation. Therefore, though the administrator or executor is required to pay the tax, he pays it out of the legacy for the legatee, not on account of the estate. The requirement of the statute that the executor or administrator shall make the payment is prescribed to secure such payment, because the government is unwilling to trust solely to the legatee. No one questions that where a legacy is given for a specified amount the tax must be deducted from the amount of the legacy and the balance only given to the legatee." (p. 447.)

After stating that there was no more reason for deducting the federal tax than for deducting the amount of the state inheritance tax, the court said further: (Italics ours)

> "The answer to the argument in both cases is as already said that *the full amount of the legacy is in law paid to the legatee* and the deduction made from it and paid to the state or federal government is paid on account of the legatee from the legacy which he receives." (p. 448.)

In *Blackstone v. Miller, supra*, the legacy taxed in New York was a part of an estate, the entire succession of which had been subjected to an inheritance tax in Illinois and also to a federal legacy tax, and it was argued that "the failure to deduct from the value of the property the amount of the Illinois inheritance tax and the federal legacy tax was error." (pp. 195, 203.) While the opinion of this court does not deal separately with this precise question, we think that what was there said on the objection of the plaintiff in error to the taxation of the transfer of the same property in two jurisdictions includes, and was intended to include, the alleged error in the refusal of New York in computing its tax to deduct the amount of the tax paid in Illinois.

> "The fact that two states, dealing each with its own law of succession, both of which the plaintiff in error has to invoke for her rights, have taxed the right which they respectively confer, gives no cause for complaint on constitutional grounds. *Coe v.*

Errol, 116 U. S. 517, 524; *Knowlton v. Moore*, 178 U. S. 53. The universal succession is taxed in one state, the single succession is taxed in another. The plaintiff has to make out her right under both in order to get the money. See *Adams v. Batchelder*, 173 Massachusetts, 258." (pp. 206–207.)

V.

The State of Wisconsin, in Imposing this Tax, Impaired no Obligation of any Contract.

The argument of counsel for the plaintiffs in error (Brief, pp. 26–27) to show that the tax impairs the obligation of the contract represented by the assignments in trust and violates sec. 10, art. I of the federal constitution is here presented upon the theory that the attempted assignment by the wife of a policy of life insurance upon the life of the decedent and payable to her was a valuable consideration, resulting in the creation of vested rights in the alleged contract. From the form of the assignment of error below (Trans. p. 5) and of the statements in the petition for writ of error (Par. VI, X, XII and XVII, pp. 2, 3, 4, 5–6) and the form of the assignment of error here (Trans. p. 4), it would seem that this contention is rather in the nature of an after-thought, and that the argument under the Contract Clause was presented below upon the theory that the tax impaired the obligation of the

contract by working a diminution of the amount of the estate which the trustee assumed to hold under the assignments for the benefit of the beneficiaries therein named.

That contention appears to be abandoned here and is clearly untenable for, if the tax was otherwise valid, it inhered in the transaction and accrued at the time of the transfer and was as much a condition of the contract as though expressly inserted therein. Indeed, it is expressly provided, in the terms of the assignment in trust, that, before making any distribution of the trust estate to the beneficiaries therein named, the trustee shall first pay all "taxes and assessments and other expenses relating to said trust property." (Trans. pp. 56–57.)

That a valid tax in such a case does not impair the obligation of such a contract is expressly held by this court in *Chanler v. Kelsey*, 205 U. S. 466, 478–479, where the court said:

> "Nor do we perceive that the effect has been to violate any contract right of the parties. It is said that this is so, because instead of disposing of the entire estate, ninety-five per cent of the property included in the power has been transferred and five per cent taken by the state; but as there was a valid exercise of the taxing power of the state, we think the imposition of such a tax violated no contract because it resulted in the reduction of the estate."

See also:

Orr v. Gilman, 183 U. S. 278, 288–289, and cases there cited.

The same considerations apply with equal force as against a claim of immunity from taxation set up on behalf of a beneficiary of the trust. Even though the wife had made a valid assignment of the life insurance policy in consideration of the benefits to be derived by her from the trust assignment, this would not make a tax upon the transfer transaction an act of the state impairing the obligation of the contract, for, as already said, the tax, if otherwise valid, *was a condition of the assignment.*

We deem it unnecessary to argue the question whether a consideration of the character here set up—the assignment by a wife to her husband, and at his instance, of a policy of life insurance of twenty-five thousand dollars upon his life, in order that the same might be by him assigned in trust and become a part of a trust estate, out of which she was to receive upwards of two hundred thousand dollars—was such a consideration as would take the transfer out of the inheritance tax statute of the state. (But see *State Street Trust Co. v. Treasurer*, 209 Mass. 373.) That question is not open here. It is not raised by the assignment of errors here and was not presented, considered or passed upon in the court below. That question was immaterial below, for the reason that the state courts held, *and without objection from these plaintiffs in error*, that the attempted

assignment by the wife of this policy of insurance was not effective in law, and the rights of the wife in the policy were never divested thereby. The decision of the state supreme court on this proposition is, upon the state of this record, conclusive here. No argument under the contract clause can have a valid basis upon a consideration which never passed.

On the state's appeal to have the value of this life insurance policy taxed as a part of the trust estate, the supreme court of the state held that the wife never relinquished her rights therein and that the policy remained her property and was not a part of decedent's estate, and, therefore, not taxable. (Trans. p. 104.)

So far as the argument under the contract clause rests upon the proposition that the Inheritance Tax Law was passed after the time of the transfer, it is without foundation in fact. There may be some question as to the effective date of the original assignment in trust, as to whether this assignment took effect as of the date when the securities were delivered and the assignment drawn up, December 11, 1902, which was before the passage and publication of the Inheritance Tax Law, ch. 44, Laws of 1903, or whether this assignment took effect as of the date of the execution and acknowledgment thereof on April 4, 1903, which was after the passage and publication of the law, but we deem this immaterial. As shown on the statement of facts, the original assignment in trust was in effect revoked as

to any property to which it might apply and as to any property involved here, and the trustee derived such title as it had in any of the property of the decedent held by it at the time of his death and upon which the tax was imposed *by virtue only of the assignment dated May 22, 1907*, which assignment was executed when the law under which the transfer was taxed was in force.

VI.

The Tax was upon a Transfer by a Resident of Wisconsin in the Nature of a Testamentary Distribution of Intangible Personal Property, the Situs of which was in Law in the State of the Domicile, and that State had Jurisdiction to Impose the Tax.

The Right to Tax.

This court has firmly established the principle that the right of the owner to control the devolution of his property after his death and of the legatee or heir to receive property from his testator or ancestor is not a natural right but one which is wholly created and conferred by statute law and which the state may take away entirely or condition as it may see fit.

Mager v. Grima, 8 How. 490, 493;
Magoun v. Illinois T. & S. Bank, 170 U. S. 283, 288;

United States v. Perkins, 163 U. S. 625, 627, 628;
Knowlton v. Moore, 178 U. S. 41, 55–56;
Plummer v. Coler, 178 U. S. 115, 137.

The statement of this proposition in the last case cited is typical of the declarations repeated in all of them: (Italics ours)

> "Without undertaking to go beyond what has already been decided by this court in *Mager v. Grima*, 8 How. 190, in *Scholey v. Rew*, 23 Wall. 331, and in *United States v. Perkins*, 163 U. S. 625, and in the other cases heretofore cited, *we may regard it as established that the relation of the individual citizen and resident to the State is such* that his right, as the owner of property, to direct its descent by will, or by permitting its descent to be regulated by the statute, and his right, as legatee, devisee or heir, to receive the property of his testator or ancestor, *are rights derived from and regulated by the State.*" (178 U. S. 137.)

In *United States v. Perkins, supra*, this is the statement of the law: (Italics ours)

> "Though the general consent of the most enlightened nations has, from the earliest historical period, recognized a natural right in children to inherit the property of the parents, *we know of no legal principle to prevent the legislature from taking away* or limiting the right of testamentary disposition or imposing such conditions upon its exercise as it may deem conducive to public good." (163 U. S. 628.)

The Grounds of Distinction Urged.

The sole grounds of distinction here relied upon by the plaintiffs in error to negative power in the state to tax this succession are that this transfer (although one by which the decedent, a resident of the state, secured a devolution of his intangible personal property taking effect upon his death and in the nature of a testamentary distribution to his natural heirs, also residents of the state) was one accomplished through an assignment in trust executed in a foreign state to a foreign trustee and that the securities representing the property were, at the time of the transfer and until decedent's death, in the foreign state. It is argued from these grounds of distinction that the situs of the securities was in the foreign state and the transfer accomplished under its laws without recourse to the law of the domicile and therefore the state of the domicile was without jurisdiction to impose a tax thereon. While the precise question does not seem to have been passed upon here, in any strictly analogous case, we think that, upon reason and upon the authority of related decisions in this court and the decisions in point elsewhere, the contention should not be sustained.

It must be conceded, we take it, that, if this transfer of intangible personal property, although held in a foreign state, had been by will or intestate law, it would have been sub-

ject to an inheritance tax in the state of the domicile upon the principle that *mobilia sequuntur personam.*

Keeney v. New York, 222 U. S. 525;
Matter of Keeney, 194 N. Y. 281;
Matter of Swift, 137 N. Y. 77;
Matter of Corning, 23 N. Y. S. 285;
Matter of Cornell, 170 N. Y. S. 423;
Matter of Dingman, 72 N. Y. 694;
Frothingham v. Shaw, 175 Mass. 59;
Gallup's Appeal, 76 Conn. 617;
Hopkin's Appeal, 77 Conn. 644;
Mann v. Carter, 74 N. H. 345;
Re Hartman, 70 N. J. Eq. 664;
Lines' Estate, 155 Pa. 378;
Milliken's Estate, 206 Pa. 149;
People v. Union Trust Co., 255 Ill. 168;
Douglas County v. Kountze, 84 Neb. 506, 121 N. W. 593.

Mobilia Sequuntur Personam.

As applied to intangible personalty, the rule *mobilia sequuntur personam* is not a fiction. Stocks, bonds and notes are little more than paper evidences of choses in action. They represent a right in the owner to receive payment of a debt or a distributive share in the profits of a corporate enterprise. Without a lawful owner they are valueless. It is impossible to conceive them in mind in their full legal significance apart from the person of the owner. They represent rights personal in him. Only the owner in his very person or one to whom he has by his personal act transferred them may enforce the rights and enjoy the rights of property which they represent. Cer-

tificates of stock and the like are not property but merely representative of property.

Clark v. Treasurer and Receiver General, 218 Mass. 292, 293–294.

The *domicile* of the owner of such personalty, rather than the location of the securities, has generally controlled as to the right to impose inheritance taxes, and even property taxes, upon such property, because the legal situs is determined by the rule *mobilia sequuntur personam.*

Cases cited *supra*, and
Eidman v. Martinez, 184 U. S. 578;
Moore v. Ruckgaber, 184 U. S. 593;
Buck v. Beach, 206 U. S. 392;
Hawley v. Malden, 232 U. S. 1, 11–12.

In *Eidman v. Martinez*, *supra*, it was sought to impose a federal legacy tax upon a transfer by will and descent of personal property held in this country passing from a non-resident alien decedent to his son, also a non-resident alien. This court, upon an extended review of the authorities, English and American, held that, in view of the principle *mobilia sequuntur personam*, the tax could be imposed only if such construction were *required* by express words in the law. The conclusion from the English cases is stated thus:

"From this analysis of the English cases it clearly appears that, under a general act imposing a duty upon legacies, the law of the domicile of the testator controls, and if he be domiciled abroad, whether an alien or a British subject, his legacies are exempt,

whether the property be in England at the time of his death, or be subsequently remitted there by his executors for local administration and distribution." (184 U. S. 586.)

Referring to several American cases cited the court says: (Italics ours)

"These cases seem rather to accentuate the general principle that general statutes imposing taxes upon legacies *do not apply to the personal property of non-resident testators*, and that *a special inclusion* of such is necessary to subject it to taxation." (*Id.* p. 587.)

The North Carolina case of *Alvany v. Powell*, 55 N. C. 51, 2 Jones Eq. 51, holding the contrary rule, and relied on by plaintiffs in error here, is reviewed and expressly rejected as authority, the court saying:

"The North Carolina case was decided in 1854, and, so far as we know, has not been followed in any other State, and it is the only one to which our attention has been called that seems to be in point in favor of the construction contended for by the Government." (*Id.* pp. 588–589.)

The tax in such case being not on the property but upon the succession, the court said: "*The actual situs of the property in such cases cuts but a small figure.*"

Mobilia Sequuntur Personam Still the Law.

The law of *situs*, as relates to intangible personal property for purposes of taxation, is

definitely stated in the opinion of this court in the recent case of *Hawley v. Malden, supra:* (Italics ours)

"To support the contention that this familiar state action, hitherto assumed to be valid, is fundamentally violative of the Federal Constitution, the plaintiff in error invokes the doctrine that a State has no right to tax the property of its citizens when it is permanently located in another jurisdiction. *Louisville & Jeffersonville Ferry Co. v. Kentucky*, 188 U. S. 385; *Del., Lack. & West. R. R. Co. v. Pennsylvania*, 198 U. S. 341; *Union Transit Co. v. Kentucky*, 199 U. S. 194. *But these decisions did not involve the question of the taxation of intangible personal property* (*Union Transit Co. v. Kentucky*, 199 U. S. p. 211); nor do they apply to tangible personal property which, although physically outside the State of the owner's domicile, has not acquired an actual situs elsewhere. *Southern Pacific Co. v. Kentucky*, 222 U. S. 63, 68. When we are dealing with the *intangible* interest of the shareholder, *there is manifestly no question of physical situs*, so far as this distinct property right is concerned, and the jurisdiction to tax it is not dependent upon the location of the lands and chattels of the corporation." (232 U. S. 11.)

And further:

"While the shareholder's rights are those of a member of the corporation entitled to have the corporate enterprise conducted in accordance with its charter, they are still in the nature of contract rights or *choses in action*. Morawetz on Corporations, sec. 225. As such, in the absence of legislation prescribing a different rule, *they are appro-*

priately related to the person of the owner, and, being held by him at his domicile, constitute property with respect to which he is under obligation to contribute to the support of the government whose protection he enjoys." (*Id.* p. 12.)

These propositions and these cases are not at all inconsistent with the cases holding that a state *other than the state of the domicile* of the owner of tangible or intangible personal property may tax such property or the transfer thereof only when the property is found therein or the laws of such state secure the enforcement of rights in such property or regulate and effectuate its transfer. It is in *such* cases, where the rule *mobilia sequuntur personam* will *not* support the tax, that the physical situs is resorted to or the right to tax rested upon the proposition that the law of the taxing jurisdiction is invoked for the benefit of the owner or transferee of the property. It is such cases that counsel cite to their contention that "An inheritance tax cannot be levied by any state unless the operation of its law is necessary in order to effect the transfer."

Walker v. Mansfield, (Mass.) 109 N. E. 647;
In re Clark's Estate, 37 Wash. 671;
Clark v. Treasurer & Receiver General, 218 Mass. 292;
Eidman v. Martinez, 184 U. S. 578;
Moore v. Ruckgaber, 184 U. S. 593.

Of the Cases Relied on by Plaintiffs in Error.

In *Walker v. Mansfield, supra*, the only ground of jurisdiction claimed was residence within Massachusetts, not of the testator, *but of the legatee of a power* under his will to appoint by her will a beneficiary of a trust created by his will. The decedent was a resident of Maryland, his will was made and his estate administered there and the property had remained there in the hands of the trustee upwards of half a century. It was *as applied to such a situation* that the court of Massachusetts said that, to support the tax, it must be shown that the transfer depended upon the law of that state. If the property had belonged to the resident, the rule would have been otherwise. The court said: (Parenthesis ours)

> "If the property in Maryland had belonged to Mrs. Barnard, (she being a resident decedent) it would have been subject to the tax. *Frothingham v. Shaw*, 175 Mass. 59, 55 N. E. 623, 78 Am. St. Rep. 475. But it did not belong to her. She had no title to it. She simply had the power of disposition if she chose to exercise it." (109 N. E. 648.)

In *Clark v. Treasurer, supra*, the question before the court is stated thus: (Italics ours)

> "The test to be applied to determine whether the property of a *non-resident* is subject to an inheritance tax is whether it is

'property within the jurisdiction of the Commonwealth,' 'corporeal or incorporeal,' and [or] any interest therein." (218 Mass. 293.)

It was held that the tax could not be imposed on stock in foreign corporations, although the certificates of stock were present in the state, because such shares did not constitute property "found" within the state. The bearing of the case on the proposition asserted by counsel is not direct.

The property in question *In re Clark's Estate, supra*, was property of a *non-resident decedent*, as was also the case in *Eidman v. Martinez* and *Moore v. Ruckgaber*.

Alvany v. Powell, 55 N. C. 51, has, as we have seen, been rejected as authority in this court and the other North Carolina case cited by counsel, *State v. Brevard*, 62 N. C. 141, merely follows the discredited authority of *Alvany v. Powell*.

Re Joyslin's Estate, 76 Vt. 88, was ruled apparently upon the wording of the inheritance tax statute of Vermont. When the legislature changed the statute, the court departed from the ruling in that case.

Re Howard, 80 Vt. 489.

In *Woodruff v. Attorney General*, 1908 App. Cas. 508, the decision was apparently controlled by the strict provisions of the British North America Act and has no very persuasive force as applied to the constitutional questions here raised. That case is, moreover, in the supreme court of Canada denied the effect

contended for it by counsel, so far as it touches the point here.

Rex ex rel. Atty. Gen. v. Cotton, 45 Can. S. C. 469.

We do not feel warranted in extending this brief by analysis of the cases cited at pages 14–15 of counsel's brief and which are not even claimed *to support directly* the proposition asserted. That proposition is not found in any authoritative decision as applied to the power of a state to tax a testamentary disposition of intangible personalty *by a resident*. That a state *other* than the state of the domicile must show either jurisdiction of the property or recourse to its law as essential or beneficial to the transfer may be admitted without conceding that proposition *as applied to the state of the domicile*.

Power to Tax Successions Not Derived Solely from State Grant of Privilege or State Right to Regulate, but is Fundamental.

The contention here put forth by the learned counsel, and their argument in support of it, *if adopted, would be an unanswerable objection to the imposition of a federal legacy or inheritance tax*. The precise contention and argument advanced by counsel in this case was, on a former occasion, vigorously pressed upon this court to defeat the right of Congress to impose

such a tax. That contention and argument was fully considered and overruled here in *Knowlton v. Moore*, 178 U. S. 41, 56–61.

The contentions of the plaintiff in error there are stated in the opinion: first, that the federal legacy taxes were direct taxes not apportioned and hence repugnant to sec. 8, art. I, Const.; second, if not direct taxes, "*they were levied on rights created solely by state law, depending for their continued existence on the consent of the several states, a volition which Congress has no power to control, and as to which it could not, therefore, exercise its taxing authority;*". (pp. 45–46.)

The opinion, after establishing the character of the tax not as a direct tax or on property, but a tax upon the succession (p. 55); that, whatever the form or designation of such a tax, "tax laws of this nature in all countries rest in their essence upon the principle that death is the generating source from which the particular taxing power takes its being and that it is the power to transmit, or the transmission from the dead to the living, on which such taxes are more immediately rested," meets squarely this question, thus again stated: (Italics ours)

> "Having ascertained the nature of death duties, the first question which arises is this: Can the Congress of the United States levy a tax of that character? The proposition that it cannot rests upon the assumption that, *since the transmission of property by death is exclusively subject to the regulating authority of the several States, therefore the*

levy by Congress of a tax on inheritances or legacies, in any form, is beyond the power of Congress, and is an interference by the National Government with a matter which falls alone within the reach of state legislation." (p. 56.)

After noting that the right to impose such taxes had been exercised unquestioned by Congress since 1797, the opinion proceeds to clarify the confusion resulting from the designation of such taxes "as privilege taxes, or describing them as levied on a privilege" and from the decisions which suggest that, because of the power of the state to regulate successions, there existed "a less trammeled right to tax inheritances and legacies than obtained as to other subject-matters of taxation," saying: (Italics ours)

"The conception, then, as to the privilege, *whilst conceding fully that the occasion of the transmission or receipt of property by death is a usual subject of the taxing power*, yet maintains that a wider discretion or privilege is vested in the States, because of the right to regulate." (p. 57.)

That the power to impose inheritance taxes inheres in government, independently of any special privilege conferred by the state in aid of the succession, *because the devolution of property by death is universally "a usual subject of taxation,"* is held in unequivocal language: (Italics ours)

"All courts and all governments, however, as we have already shown, conceive that

> *the transmission of property occasioned by death*, although differing from the tax on property as such, *is*, nevertheless, *a usual subject of taxation*. Of course, in considering the power of Congress to impose death duties, we eliminate all thought of a greater privilege to do so than exists as to any other form of taxation, as the right to regulate successions is vested in the states and not in Congress." (p. 58.)

The defect of counsel's argument here is the same as pointed out by the court in that case: (Italics ours)

> "But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission or receipt of property occasioned by death is imposed on the exclusive power of the state to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest *is the transmission or receipt, and not the right existing to regulate*." (p. 59.)

It is upon this proposition solely and necessarily, and because "the taxing power of Congress extends to all usual objects of taxation," that the right of Congress to tax successions is sustained in this court. It is plainly and expressly conceded that Congress has no power to regulate or by its acts give effect to or confer any privilege to make transfers in the nature of testamentary dispositions of property.

Basis of the Tax as Held in Wisconsin.

The law of Wisconsin, as adjudged by its highest court, is that the right to transmit or receive property by will or descent is a natural right, not a creature of the state. The right of the state to tax successions is based not upon the theory of a special privilege conferred, taking such tax out of the limitations applying to other forms of taxation, but, as in *Knowlton v. Moore*, upon the ground that historically and universally such transfers have been a usual object of taxation by government. And it is held in that state that such a tax to be valid must meet and that this tax does meet all constitutional requirements applicable to taxation generally (except, of course, the provision of sec. 1, art. VIII of the state constitution, which is expressly self-limited to direct property taxation).

Nunnemacher v. State, 129 Wis. 190, 203;
Black v. State, 113 Wis. 205.

The right of the state to regulate successions is held to rest also upon similar grounds; that "Governments have, from the earliest times, regulated the exercise of these rights." But this right of the state to regulate is made expressly and definitely subject to the constitutional limitation upon all exercise of police power, that the regulation must be reasonable. 129 Wis. 199, 202-3.

If the decision of this court in *Knowlton v. Moore*, and that of the Wisconsin court in the

Nunnemacher Case that a succession tax may be imposed by government fundamentally upon the ground that the devolution of property "from the dead to the living" is and ever has been a usual object of taxation are sound, then the consideration whether some special benefit or privilege in aid of the devolution is derived from the law of the taxing jurisdiction becomes immaterial unless it is necessary to invoke such a consideration in support of an inheritance tax law which infringes constitutional limitations upon the power of taxation generally. While a privilege or benefit derived from the law of the taxing jurisdiction may confer jurisdiction, otherwise lacking, to impose the tax, as in the case of a tax upon the estate of a non-resident decedent, where jurisdiction exists upon other grounds to impose the tax, as jurisdiction of the person and of the property in the case of a transfer of intangible personalty of a resident decedent, it becomes immaterial that the transfer may have been accomplished in a manner made possible by the law of a foreign state.

State Had Jurisdiction of the Person and of the Property.

The decedent, at the time of the transfer by the assignments in trust in this case, was a resident of Waukesha county, state of Wisconsin, and so described himself in the assignments. (Trans. pp. 56, 71.) He continued

to be such at the time of his death, when these assignments took effect, according to their terms, so as to vest the beneficial interests in these plaintiffs in error. They also, at all of these times, were residents of Wisconsin. The property in question was in the nature of intangible personalty. It was property in the person of the decedent. The personal rights in the decedent, in respect thereto, rather than the paper securities in the vaults of the trust company, constituted, no less in fact, than in law, *the property*.

As to such property the common law rule that *mobilia sequuntur personam* is reasonable and is as near the fact as any rule fixing the situs of such property can be. It is the universal rule of law, in the absence of express statute superseding it. It is sometimes permitted to be set aside by some express statute to *support* a tax, but never is it set aside in the absence of express statute to *defeat* an otherwise valid tax. Under these recognized and established principles of law the state of Wisconsin had jurisdiction to tax the testamentary disposition of this property. It had jurisdiction of the person of the decedent and of the persons of his beneficiaries, and it had jurisdiction of the property because the situs of the property, at the time of the transfer, was, in law, in that state.

The Transfer was Affected by Wisconsin Law.

Furthermore, we do not concede that the transfer in this case was accomplished without any recourse to the law of the domicile. The decedent fortified the assignments in trust by a will, the validity of which related back to the law of the domicile. The will is, by reference and in effect, made a part of the assignment in trust. The execution of this will would be under the law of the domicile and the estate would be administered upon in accordance therewith as construed by the law of the domicile.

The decedent, upon the execution of these assignments, reserved the right to revoke the same and to repossess himself of the property assigned at any time during his life time. This right he could undoubtedly exercise by the making of a later will. In the event of the trust being questioned, it would be necessary for the beneficiaries claiming thereunder, as it was held to be by the supreme court of Nebraska in *Douglas County v. Kountze*, 121 N. W. 593, to show whether or not the decedent made a subsequent will. In view of the reservation by the decedent of the power to revoke, their rights "cannot be absolutely ascertained from a consideration of the deed of settlement." If the decedent had exercised this right by the execution of a valid will "then said beneficiaries must trace their succession through said will and by grace of the laws" of decedent's domicile. (121 N. W. 596.)

The waiver of the widow's right of dower or of a child's share under the law of Wisconsin, in consideration of benefits derived under the trust assignments, or waiver of the rights of beneficiaries, upon the failure and renunciation of the trust as to the tangible property in the state of Wisconsin constituting a large part of the estate, to insist that the will be offered for probate, in order that the estate might pass by will, and the intent of the decedent effectuated rather than defeated, as it was here, whether by way of compromise agreement among the beneficiaries or otherwise, although permitted by the state, is not conclusive against the state upon the question of state power to tax.

People v. Union Trust Co., 255 Ill. 168, 182.

Decision below in Harmony with Similar Cases Elsewhere.

While no case is found precisely like the instant case on all the facts, the decision of the highest court of the state in this case is in harmony with the court decisions in similar cases in other jurisdictions and is supported in principle by the clear weight of authority.

Keeney v. New York, 222 U. S. 525;
Matter of Keeney, 194 N. Y. 281;
Countess de Noailles' Estate, 236 Pa. 213;
Lines's Estate, 155 Pa. 378;
People v. Union Trust Co., 255 Ill. 168;

Douglas County v. Kountze, (Neb.) 121 N. W. 593;
Frothingham v. Shaw, 175 Mass. 59;
Gallup's Appeal, 76 Conn. 617;
Hopkins' Appeal, 77 Conn. 644;
Mann v. Carter, 74 N. H. 345;
In re Hodges' Estate, (Cal.) 150 Pac. 344.

The *Keeney Case, supra*, like the case at bar, dealt with an inheritance tax imposed upon a transfer in trust, made to take effect after the death of the donor, of personal property consisting of bonds and stock to a trust company domiciled in a foreign state, the securities being held in the foreign jurisdiction from the time of the transfer until the donor's death. It was argued there, as here, that the securities, being held outside of the state with the legal title in a foreign trustee, the property was beyond the jurisdiction of the state to impose a transfer tax. It was argued that the transfer to the beneficiaries was outside of the state and that, of the three persons beneficially interested in the property, two were nonresidents of the state. *Union Ref. Trans. Co. v. Kentucky*, 199 U. S. 194, relied on by plaintiffs in error here, was cited. (222 U. S. 526–527, 529; 194 N. Y. 284.) It was held that these objections did not invalidate the tax. (222 U. S. 537; 194 N. Y. 287.)

The only circumstances differentiating the *Keeney Case* from the case at bar are (1) it was inferred in that case from the recital in the trust assignment with respect to the residence of the donor that the assignment was executed at the place of the residence of the donor, and

(2) it was assumed, in the absence of any showing to the contrary, that the securities were at the domicile of the donor when transferred to the foreign trust company. (194 N. Y. 287.) Upon these grounds counsel distinguish the *Keeney Case* from the case at bar. But it is the decision of the state courts in this case that the rule, *mobilia sequuntur personam*, governs this class of property. We think we have shown that this rule is well supported and is applicable. If this rule is here applied, then the transfer in this case was of property at the domicile of the owner and the transfer was accomplished there because it was not complete until the delivery of the property, in addition to the execution of the trust assignment.

The trust in the instant case is shown to have been a mere passive trust and of precisely the same character as that found in *Countess de Noailles' Estate, supra.* In that case the same argument for a situs based upon the location of the securities for a period of sixty years at the domicile of the trustee, where the assignment in trust was executed and the securities transferred, was urged in support of an inheritance tax and rejected by the supreme court of Pennsylvania. It was held that the situs of the property for purposes of inheritance taxation was at the domicile of the owner "within the rule or maxim, *mobilia sequuntur personam.*" The decision in *Lines's Estate, supra,* was referred to at length and with

approval and was followed. (236 Pa. 216-217.)

The case of *Lines's Estate, supra*, was, save in a single insignificant particular, *precisely and in every detail like the case at bar.* The only difference between the two cases is that the decedent Lines did not, during his lifetime, exercise the right reserved, as did the decedent in this case, to repossess himself of the property assigned in trust. That difference, however, if at all material, is one which makes the case at bar a stronger case in support of the tax. However, as the court there found that the trust was a mere nominal or passive trust, as is the trust here, the difference becomes immaterial. The identity of the questions raised by the two cases is illustrated by the statement of fact in *Lines's Estate*, as stated on the opinion of the court by Mr. Chief Justice Sterrett:

> "On July 22, 1890, Jesse Lines died in the city of Easton, Pennsylvania, where he had resided for over thirty years prior thereto. While on a visit to New York, in May, 1887, he executed and delivered to the Union Trust Company, a corporation organized under the laws of New York and doing business in that state, a deed of trust of one hundred and eighteen mortgage bonds, of $1,000 each, issued by a Missouri railroad corporation, and two hundred and eighty-one shares capital stock of the Taylor Iron Works, a New Jersey corporation, doing business therein. These securities were then delivered, and, on the books of the respective corporations, transferred to 'The Union Trust Company of New York, in trust for

Jesse Lines and others.' According to the provisions of the deed, said trustee was to hold the securities, collect the interest and income thereof and pay the same to the said Jesse Lines during his natural life, and, upon his decease, to divide said bonds and stock and transfer one-half thereof to certain of his nephews and nieces and the residue to his putative son, as specified in said trust. The trust deed contains a clause in which the said Jesse Lines, as first party thereto, reserves to himself 'the right and power, by an instrument in writing to be delivered to the second party, to alter, change, modify or revoke all disposition and direction as to transfer and dispositions made and to be made of said property after the decease of first party.' But it does not appear that the right thus reserved was ever exercised. The trustee collected and paid over to Mr. Lines the income of the trust securities during his life, and after his decease divided and distributed the corpus of the trust, consisting of said securities, etc., to the beneficiaries entitled thereto, according to the provisions of the deed." (155 Pa. 391.)

What is said on the opinion of the court in holding the transfer taxable in Pennsylvania is strictly applicable in the case at bar:

"In view of the undisputed facts, it is strange that any question should have been seriously raised, either as to the right of the commonwealth to the tax on the securities, or the liability of the beneficiaries to pay their respective proportions thereof. Mr. Lines was not only the beneficial owner of the securities prior to and at the time of his decease, but under the reserved power of modification, revocation, etc., he had abso-

> lute control of the disposition to be made of the securities upon his decease. * * * Moreover, the securities were that kind of personal property, the situs of which follows the owner. As was said in *Orcutt's Appeal*, 97 Pa. 179, the general rule is that the situs of personal property follows the owner, but for particular purposes some species of personalty may have a situs distinct from the legal one, but that in question is not within any of the recognized exceptions to the general rule." (155 Pa. 392–393.)

The Nebraska case, *Douglas County v. Kountze, supra*, in its facts, lies between the *Keeney Case* in New York and the case at bar. The decedent Kountze, a resident of Nebraska, in that case assigned his intangible personal property, consisting of stocks and bonds, in trust to a New York trustee, with powers similar in general to those contained in the assignment in trust in the case at bar (121 N. W. 594), except that the only power reserved by the donor to modify the trust was one to so modify as to certain beneficiaries by his will. In the instant case the reservation is broader and would include revocation by and substitution therefor of a will duly executed by the decedent. So that the reasoning of the Nebraska court, holding the trust estate taxable in that case upon the ground in part that, in order to give the trust effect, it would be necessary to establish that it had not been impaired by a subsequent will, is in point to support the tax here. Otherwise, the case is similar to the *Keeney*

Case, supra, and what is said above with respect to that case applies.

Frothingham v. Shaw, Gallup's Appeal, Hopkins' Appeal and *Mann v. Carter, supra*, quite refute, we think, counsel's argument that the rule *mobilia sequuntur personam* is a mere obsolete fiction. These authorities give effect to this maxim as a vital and controlling principle of law, determining the situs of the personal property for purposes of inheritance taxation.

A Reversal Would Invite Wholesale Evasion of the Inheritance Tax.

If further argument were needed to sustain the tax in this case the court will find it in the duty which courts owe to refrain from making decisions which deny to government the power to protect the sources of revenue for the support of government and to prevent wholesale evasions of its tax laws. As has been well said:

> "Taxes are the life-blood of civil government. The right of taxation is an attribute of sovereignty. It is inherent in the state and essential to the perpetuity of its institutions."
>
> *Knoxville, etc. Ry. Co. v. Harris*, 99 Tenn. 684.

The assertion on counsel's brief (p. 3) that "there was no purpose on Mr. Bullen's part to avoid a Wisconsin inheritance tax by means of the proposed transfer" is gratuitous. It

is not shown as a fact by this record. It is mere argument based upon the fact that whereas the original assignment in trust was *dated* December 11, 1902, the particular statute under which the tax was imposed did not take effect until March 31, 1903. On the other hand it appears that the decedent entered into negotiations for and had his counsel engaged on the preparation of this trust assignment in 1900 or 1901, and that the execution of the assignment was only postponed to a later date in aid of the decedent's efforts to induce the wife to join in certain deeds, which he never succeeded in doing.

During all of this time and until February 18, 1902, when the decision in *Black v. State*, 113 Wis. 205, was rendered, Wisconsin had an inheritance tax law which had been enacted in 1899. That law was commonly accepted and was being observed and enforced until denounced in the *Black Case* for a defect of classification. But any citizen of that large knowledge of affairs which the decedent undoubtedly possessed, well understood that the state of Wisconsin was definitely committed to the principle of inheritance taxation and that it only wanted another session of the legislature to correct the defect pointed out by the court and reenact the law. It is further a significant fact that it was not until the fourth day after the official publication of the reenactment of the law as in force at the time these proceedings were instituted, to-wit, on April 4, 1903, that the decedent formally and

validly executed and acknowledged the assignment in trust and executed a will for the apparent purpose of fortifying and protecting that assignment against assault. It is to be borne in mind, moreover, that the decedent, while permitting the assignment in form to stand and remain in force, repossessed himself thereafter of all the property assigned, which he had delivered to the trustee as such. Some three or four years later, being manifestly apprehensive lest the mere restoration of the property and securities to the possession of the trustee would not operate to restore the trust, he executed on May 22, 1907, at a time when the law was in full force and effect, the "further assignment in trust" which we contend is the only assignment that was effectual to transfer to the trustee any of the property held by it at the time of decedent's death.

As was said by the appellate division in New York, *In re Palmer's Estate*, 102 N. Y. S. 236, 241, where the evidence tending to show an intent to evade the inheritance tax was no more direct than in this case:

> "Efforts to evade the law are secret, and not public. Witnesses are not called in to attest them. The evidence to prove the same must of necessity be circumstantial rather than direct, and such circumstantial evidence may overbear the positive testimony of an interested party who swears to the contrary. The effect of this transfer is to pass the property to the next of kin of the deceased exactly as it would have passed by will had this transfer not been before made. There is no moral reason why this

property should not be taxed as though the property had passed three months later by the will of the deceased. Courts should not be overzealous to protect an estate from taxation and to shield parties by a presumption of innocence where no other rational motive for a transfer is shown, and no reason appears why the estate itself should not bear its just proportion of the public burden."

The intention of the decedent in this case is not controlling. The chief concern of the state in this case is not with regard to the tax on this particular estate. An adverse decision in this court, resting as it must upon the slight difference in the facts between this and the *Keeney Case, supra*, would open wide the door and invite wholesale evasion of the inheritance tax law of the state, unbalance the state system of taxation and result in a serious depletion of its revenues. No thinking and informed mind can doubt for a moment that such an invitation would be generally availed of by the wealthy citizens of the state. All that would be necessary to put the swollen fortunes of the state, which to-day exist chiefly in the form of intangible personalty, largely beyond the reach of the state for purposes of inheritance taxation would be *the delivery of some papers and the scratch of a pen* in some other state or country whose law imposed little or no tax upon the devolution of property by death. The transaction could be accomplished, patterned upon the trust assignment devised in this case, at

only the slightest expense and at not the slightest inconvenience affecting the legal or practical ownership and enjoyment of the property by the real owner during his lifetime.

These considerations have heretofore been held forceful in this and other states in answer to objections to the imposition of inheritance taxes.

In the *Keeney Case*, *supra*, the right of the state to include as subject to inheritance taxation such a gift in trust vesting the legal title during the lifetime of the donor in a foreign trustee was assailed upon constitutional grounds. It was held that the consideration that conveyances in this form would be "often resorted to as a means of evading the inheritance tax" (citing that argument in the opinion of the state court, 194 N. Y. 287) was one supporting a classification of such transfers *inter vivos* for the imposition of an inheritance tax thereon. Upon this point the New York court said in that case:

> "A not wholly unnatural desire exists among owners of property to avoid the imposition of inheritance taxes upon the estates they may leave, so that such estates may pass to the objects of their bounty unimpaired. It is a matter of common knowledge that for this purpose trusts or other conveyances are made whereby the grantor reserves to himself the beneficial enjoyment of his estate during life. Were it not for the provision of the statute which is challenged, it is clear that in many cases the estate on the death of the grantor would pass free from tax to the same persons who would

take it had the grantor made a will or died intestate. It is true that an ingenious mind may devise other means of avoiding an inheritance tax, but the one commonly used is a transfer with the reservation of a life estate. We think this fact justified the legislature in singling out this class of transfers as subject to a special tax." (pp. 286–287.)

In New York this consideration, the necessity of forestalling such evasions of the tax, has been repeatedly invoked in construction and in support of the statute and to secure payment of the tax.

In re Palmer's Estate, 102 N. Y. S. 236, 240–241;
Matter of Birdsall's Estate, 49 N. Y. S. 450, 464; Affd., 43 App. Div. 624.

The same consideration was given effect by the supreme court of Massachusetts in *State Street Trust Co. v. Treasurer*, 209 Mass. 373, 379, where the court said:

"The policy of the law is, that the owner of property shall not defeat or evade the tax by any form of conveyance or transfer, where after death the income, profit or enjoyment enures to the benefit of those who are not exempted. *Minot v. Winthrop*, 162 Mass. 113. *Emmons v. Shaw*, 171 Mass. 410, 412." (p. 379.)

In Conclusion.

In conclusion we submit that the facts of the case here show that the assignment relied upon here to defeat the tax was a transfer in contemplation of death and taking effect after the death of the donor. The tax does not impair any contract obligation. The judgment of the state court imposing the tax is not inhibited by the "full faith and credit clause" of the federal constitution. The tax was correctly and lawfully measured and computed. The transfer was in the nature of a testamentary disposition of property. It was a transfer by a citizen of the state, while a resident thereof, to his natural heirs, also residents of the state, and the property involved was intangible personal property the situs of which was in law, regardless where the securities representing the property were found, at the domicile of the owner in the state of Wisconsin. The state had, therefore, jurisdiction, for purposes of this tax, not only of the persons of the owner and of the beneficiaries, but of the property, the subject matter of the transfer. The power of the state to impose the tax, notwithstanding the execution of the trust assignment and the delivery of the securities in a foreign state, should be affirmed, for to do otherwise would be to legalize a device

which would be largely and generally available and availed of by owners of large estates to escape inheritance taxation thereon.

Respectfully submitted,
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the due process provision of the Fourteenth Amendment of an inheritance tax fixed upon the estate of a resident of the State of Wisconsin, are stated in the opinion.

Mr. John R. Montgomery, with whom *Mr. Louis E. Hart*, *Mr. Jaspersen Smith* and *Mr. Lloyd R. Steere* were on the brief, for plaintiff in error:

The transfer taxed by Wisconsin became effective not under the laws of Wisconsin, but solely under the laws of another jurisdiction, and the tax violates the Fifth and Fourteenth Amendments. *Nunnemacher* v. *State*, 129 Wisconsin, 190; *Beals* v. *State*, 139 Wisconsin, 544; *State* v. *Pabst*, 139 Wisconsin, 561; *Re Bullen*, 143 Wisconsin, 512.

The transfer transaction occurs under or by virtue of, or the right to receive property is derived through, the laws of Wisconsin. The State has no extra-territorial jurisdiction. *Bliss* v. *Bliss*, 221 Massachusetts, 201; *Walker* v. *Mansfield*, 109 N. E. Rep. 647; *State* v. *Brevard*, 62 Nor. Car. 51; *Abrany* v. *Powell*, 55 N. Car. 51; *Bitlinger Est.*, 129 Pa. St. 338; *Re Joyslin Est.*, 76 Vermont, 88; *Re Swift*, 137 N. Y. 77; *Clark* v. *Clark*, 178 U. S. 186.

A decedent's personal property in a foreign jurisdiction will be subject, in a proper case, to taxation both at home and in the foreign State, if the laws of both States are requisite to the legal transfer of the property at the owner's death and it does not matter that the machinery of the law would not need to be invoked in the particular case (*Blackstone* v. *Miller*, 188 U. S. 189; *Mann* v. *Carter*, 74 N. H. 345; *Hopkins' Appeal*, 77 Connecticut, 644); but an inheritance tax cannot be levied by any State unless the operation of its law is necessary in order to effect the transfer. *Walker* v. *Mansfield*, 109 N. E. Rep. 647; *Re Clark Est.*, 37 Washington, 671; *Clark* v. *Treasurer*, 218 Massachusetts, 292; *Eidman* v. *Martinez*, 184 U. S. 578; *Woodruff* v. *Atty. Gen.*, 1908 App. Cas. 508; *Moore* v. *Ruckgaber*, 184 U. S. 593; *State* v. *Brevard*, 62 N. Car. 51;

Abrang v. *Powell*, 55 N. Car. 51; *Re Joyslin Est.*, 76 Vermont, 88.

The inheritance tax laws of Wisconsin and Illinois are both adopted from New York. Both are, therefore, subject to the same rules of interpretation. *Est. of Bullen*, P. R. 102; *People* v. *Griffith*, 245 Illinois, 532.

These are corollaries to the entire line of decisions by this court of questions relating to inheritance taxes. Cases *supra* and see *Mager* v. *Grima*, 8 How. 490; *Carpenter* v. *Commonwealth of Pa.*, 17 How. 456; *Scholey* v. *Rew*, 23 Wall. 331; *United States* v. *Fox*, 4 Otto, 315; *Clapp* v. *Mason*, 4 Otto, 589; *United States* v. *Perkins*, 163 U. S. 625; *Magoun* v. *Illinois Savings Bank*, 170 U. S. 283; *Knowlton* v. *Moore*, 178 U. S. 41; *Plummer* v. *Coler*, 178 U. S. 115; *Murdock* v. *Ward*, 178 U. S. 139; *Orr* v. *Gilman*, 183 U. S. 278; *Keeney* v. *New York*, 222 U. S. 525.

An inheritance tax is a lawful exercise of the taxing power "only when some necessary incident of the transfer transaction for its efficacy" upon the law of the State levying the tax. *Walker* v. *Mansfield*, 109 N. E. Rep. 647; *Tilt* v. *Kelsey*, 207 U. S. 43; *Re Howard Est.*, 80 Vermont, 489.

Inasmuch as the transfer transaction in this case could be carried to completion "without the aid of Wisconsin law," there was no transfer transaction or right to receive property under Wisconsin law. The right or privilege taxed by Wisconsin did not exist, and judgment against a citizen of the United States for a tax on something which does not exist, deprives him of his property without due process of law and takes his private property for public use without just compensation. *Union Transit Co.* v. *Kentucky*, 199 U. S. 194; *Del., Lack. & West. R. R.* v. *Pennsylvania*, 198 U. S. 341; *Louisville Ferry Co.* v. *Kentucky*, 188 U. S. 385; *Metropolitan Ins. Co.* v. *New Orleans*, 205 U. S. 395; *Buck* v. *Beach*, 206 U. S. 392; *State Tax on Foreign Held Bonds*, 15 Wall. 300; *Kentucky* v. *West India Oil Co.*, 138 Kentucky, 828.

The reason which exempts from inheritance taxation real property in a State foreign to its owner's domicile applies with equal force to the personal property held under trust assignment. Real estate in a foreign jurisdiction is never subject to an inheritance tax at the domicile of its owner. Cases *supra* and see *Connell* v. *Crosby*, 210 Illinois, 380; *Orr* v. *Gilman*, 183 U. S. 278; *Clarke* v. *Clarke*, 178 U. S. 186.

The maxim "mobilia sequuntur personam" may only be resorted to when convenience and justice so require. It is not allowed to obscure the facts when facts become important. *Blackstone* v. *Miller*, 188 U. S. 189; *Metropolitan Ins. Co.* v. *New Orleans*, 205 U. S. 395; *Union Transit Co.* v. *Kentucky*, 199 U. S. 194.

It is within the power of any citizen of the United States to fix the situs of his personal property at a place other than his domicile.

The judgment levying the Illinois Inheritance Tax being entitled to full faith and credit is conclusive on the Wisconsin courts as to the law under which the transfer transaction became effective. Cases *supra*.

The assignment in trust having been made upon actual consideration as not a gift but a valid contract and the law taxing it impairs the obligation of the contract. *Gelsthorpe* v. *Furnell*, 20 Montana, 299; *Chanler* v. *Kelsey*, 205 U. S. 466.

The levy of tax by Wisconsin on the amount already paid for the inheritance tax in Illinois is erroneous because the amount so paid never passed to the plaintiffs in error. A tax upon this deprives them of their property without due process of law. *United States* v. *Perkins*, 163 U. S. 625; *People* v. *Richardson*, 269 Illinois, 275.

Courts do not favor double taxation. Where it is necessary they regret the necessity. *Blackstone* v. *Miller*, 188 U. S. 189; *In re Strong*, 17 N. J. Law J. 234; *Keeney Est.*, 222 U. S. 525, distinguished.

Mr. Walter Drew, with whom *Mr. Walter C. Owen*, Attorney General of the State of Wisconsin, was on the brief, for defendant in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a proceeding to fix the inheritance tax upon the estate of George Bullen, deceased, a resident of Wisconsin. The Supreme Court of the State affirmed a judgment for a tax upon a fund of nearly a million dollars which the heirs and next of kin say cannot be taxed in Wisconsin without violating the Fourteenth Amendment and the contract clause of the Constitution of the United States. 143 Wisconsin, 512.

The facts are simple. Bullen formerly had lived in Chicago and continued to do some business there after moving to Wisconsin, which he did in 1892. He kept in Chicago the bonds, stocks and notes constituting the fund and in 1902 conveyed them to the Northern Trust Company of that City upon certain trusts. In 1904 by virtue of powers reserved he repossessed himself of the fund, but in 1907 he conveyed it to the company upon the former trusts, again. The limitations, so far as material, were of relatively small sums to a sister and niece residing in Massachusetts, and, subject to those gifts, of one-third of the income to his widow for life and the rest of the income and the principal to his four sons. But the instrument contained the following clause: "Fifth. I, the donor, expressly reserve the right to direct and control the disposition of the said trust property and estate, to revoke and vacate this trust at any time during my life, to enter into and upon and take possession of the same, or any part thereof, to require a reconveyance to me of the said trust property, or any part thereof, and to dispose of it as I may see fit. During my lifetime the principal and income shall be used for such beneficiaries

and in such manner as I may from time to time appoint, and in default of any appointment during my lifetime, and, at all events, after my death, the said income and the said principal shall be applied, paid over or held as herein provided." It also declared that no portion of principal or income should be paid under some of the leading clauses before Bullen's death unless by his direction. In fact he received the whole income during his life. The Supreme Court held that an inheritance tax was due in respect of the whole fund as upon a transfer intended to take effect in enjoyment after the donor's death.

The deeds of trust were not a merely simulated transaction. Bullen made a will shortly after the first transfer, which was of similar tenor but which, it is found, 'has not been probated,' perhaps because the parties relied upon the deeds. The deeds transferred title and they had a purpose. Bullen at the time was suffering from locomotor ataxia, his wife also was in precarious health and the chief instrument contemplated the possible disability of both. The ultimate limitations would operate unless revoked, which they were not. But Bullen, as has been seen, reserved an absolute power of control over all of his gifts and exercised it during his life by a revocation, (followed, to be sure, by a reconveyance upon the same terms), and by taking all the income of the fund. The words of Lord St. Leonards apply with full force to the present attempt to escape the Wisconsin inheritance tax, "To make a distinction between a general power and a limitation in fee, is to grasp at a shadow while the substance escapes." Sugden, Powers, 8th Ed., 396. See Gray, Perpetuities, § 526b, 1st Ed., pp. 324, 325. We do not speak of evasion, because, when the law draws a line, a case is on one side of it or the other, and if on the safe side is none the worse legally that a party has availed himself to the full of what the law permits. When an act is condemned as an evasion what is meant is that it

is on the wrong side of the line indicated by the policy if not by the mere letter of the law. What we do say is that the Supreme Court of Wisconsin was fully justified in treating Bullen's general power of disposition as equivalent to a fee for the purposes of the taxing statute, that there is no constitutional objection to its doing so, and that although Illinois also has taxed the fund, as it might, we are not aware that it has attempted to qualify the effect that Wisconsin has given to the power, and do not intimate that it could have done so, if it had tried. See *Hawley* v. *Malden*, 232 U. S. 1, 13.

The power to tax is not limited in the same way as the power to affect the transfer of property. If this fund had passed by intestate succession it would be recognized that by the traditions of our law the property is regarded as a *universitas* the succession to which is incident to the succession to the *persona* of the deceased. As the States where the property is situated, if governed by the common law, generally recognize the law of the domicil as determining the succession, it may be said that, in a practical sense at least, the law of the domicil is needed to establish the inheritance. Therefore the inheritance may be taxed at the place of domicil, whatever the limitations of power over the specific chattels may be, as is especially plain in the case of contracts and stock. *Blackstone* v. *Miller*, 188 U. S. 189, 204. *Eidman* v. *Martinez*, 184 U. S. 578, 586, 589, 590, 592. *Thomson* v. *Advocate General*, 12 Cl. & Fin. 1, 18, 24. *Frothingham* v. *Shaw*, 175 Massachusetts, 59. *Matter of Swift*, 137 N. Y. 77, 88. *Mann* v. *Carter*, 74 N. H. 345. *Appeal of Hopkins*, 77 Connecticut, 644. *Hartman's Case*, 70 N. J. Eq. 664. The same would be true of a universal succession established by will, and the notion of privity or identity of person that is recognized in these cases has been carried over to more limited bequests and in some degree to deeds. *Norcross* v. *James*, 140 Massachusetts, 188. The principle that allows the tax is to be